DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 581

[Docket No. FR 6119–F–02]

RIN 2506–AC49

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–75

RIN 3090–AK46

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12a

RIN 0991–AC14

Use of Federal Real Property To Assist the Homeless

AGENCY: Department of Housing and Urban Development, General Services Administration, and Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development (HUD), the General Services Administration (GSA), and the Department of Health and Human Services (HHS) (the Agencies) administer the Title V program, which makes suitable Federal real properties categorized as underutilized, unutilized, excess, or surplus available to States, local government agencies, and 501(c)(3) tax-exempt non-profit organizations for use to assist the homeless. This final rule incorporates required statutory changes and current practices; updates references and terminology that are now outdated; and revises procedures for more efficient program administration in the Agencies' regulations.

DATES: *Effective date:* December 13, 2024.

FOR FURTHER INFORMATION CONTACT: For information regarding each agency's implementation of these regulations, the contact information for that agency follows. The Agencies welcome and are prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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General Services Administration: Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–208–2956 or *chris.coneeney@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSA at *RegSec@gsa.gov.*

Department of Health and Human Services: Theresa M. Ritta, Program Manager, Real Property Management Services; Telephone: (301) 443–2265; Email: *rpb@psc.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, the Agencies jointly published a regulation (56 FR 23789 (May 24, 1991)), codified at 24 CFR part 581, 41 CFR part 102–75, and 45 CFR part 12a, implementing the provisions of Title V of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act or Title V) (42 U.S.C. 11411). The 1991 regulation established procedures for collecting information from landholding agencies about excess, surplus, unutilized, and underutilized properties under their control and the criteria for determining the properties' suitability for use as homeless assistance. It also provided procedures and timelines for the application process and agency review of submitted applications to use such properties for homeless assistance. The regulation has not been updated since its publication in 1991. Since that time, however, the McKinney-Vento Act has been amended several times by new legislation, including the Homeless Emergency Assistance and Rapid Transition to Housing Act (sec. 1003, Pub. L. 111–22, 123 Stat. 1632, 1664–65), the Federal Property Management Reform Act of 2016 (Pub. L. 114–318, 130 Stat. 1608), and most significantly, section 22 of the Federal Assets Sales and Transfer Act of 2016 (FASTA) (Pub. L. 114–287, 130 Stat. 1463, 1478 (codified at 42 U.S.C. 11411)).

Under section 501 of Title V, HUD handles the suitability determination and HHS processes applications from eligible organizations and monitors transferred property for compliance with programmatic requirements. GSA supports both agencies at various stages throughout the entire process including: by screening real properties reported by a particular agency as excess to determine if they are required for use by any other Federal agency; submitting properties reported to GSA for disposal to HUD for a determination of suitability for use to assist the homeless; and notifying HUD of whether there is a continuing need for the property within the Federal Government after a suitability determination has been made. If there is no continuing Federal need for the property, the property is determined surplus to the needs of the Federal Government, and if HUD determines the property to be suitable, then the property is available for application to HHS for homeless assistance use.

Pursuant to 42 U.S.C. 11411(f)(3)(A), if HHS receives and approves an application for surplus property and recommends to GSA that the property be conveyed to the applicant for homeless assistance use, GSA assigns the property to HHS. HHS then deeds or leases the property to the applicant for the purpose(s) stated in the approved application, unless a competing request for the property under 40 U.S.C. 550 is determined by GSA or HHS to be so meritorious and compelling as to outweigh the needs of the homeless. Further details about the suitability determination process and transfer of the property can be found in the proposed rule, ''Use of Federal Real Property to Assist the Homeless: Revisions to Regulations,'' at 88 FR 16834.

As previously noted, FASTA made several changes to the McKinney-Vento Act. Section 22 of FASTA amended the McKinney-Vento Act to allow for HUD's suitability determinations to be posted electronically; to eliminate subsequent posting of previously reported properties determined unsuitable with no changes; to change the timeframes related to how long suitable and available properties are held for homeless assistance use; to change the number of days by which eligible organizations must submit an expression of interest to HHS from 60 days to 30 days from the date of HUD's publication; to create a two-phased application process; to shorten the initial application processing period from 90 days to 75 days; and, if approved, provide the applicant 45 days to submit a final application. If HHS does not approve a final application after approving an initial application, disposal of the property may proceed in accordance with applicable law.

In addition to the McKinney-Vento Act and agency regulations, administration of the Title V Program is guided by Federal court decisions, including the March 13, 2017, revised Order in *National Law Center on Homelessness & Poverty* v. *United*

States Department of Veterans Affairs, 819 F. Supp. 69 (D.D.C. 1993). Subsequent nationwide litigation, including *Colorado Coalition for the Homeless* v. *GSA,* No. 18–cv–1008, 2019 WL 2723857 (D.CO. Colo. July, 1, 2019); *United States* v. *Overcoming Love Ministries, Inc.,* No. 16–cv–1853, 2018 WL 4054867 (E.D.N.Y. Aug. 24, 2018); and *New Life Evangelistic Center, Inc.* v. *Sebelius,* 753 F. Supp. 2d 103 (D.D.C. 2010) have interpreted and applied key provisions of Title V and its regulations. Taking into consideration the Agencies' experience operating the Title V program over the past 30 years, this joint regulation aims to harmonize the joint regulation with Title V, as amended by FASTA and other legislation; incorporate existing policy and practice requirements for the benefit of future applicants; and, for ease of reference, expand portions of the joint regulation that cross-reference other sections of other regulations by incorporating the referenced portions.

II. The Proposed Rule

A. Collaborative Changes Across HUD, GSA, and HHS's Individual Regulations

On March 20, 2023, the Agencies published for public comment a proposed rule titled ''Use of Federal Real Property to Assist the Homeless: Revisions to Regulations.'' [1] The Agencies proposed several changes to establish procedures conforming to FASTA and incorporating other legislative changes. They also sought to codify established policies and processes used to govern the program. For greater readability, in instances where requirements found in other sections of the regulation were referenced by citation, the Agencies proposed to instead incorporate those provisions in each agency's individual regulations. The Agencies also proposed revised suitability criteria for clarity and to address the Government Accountability Office's recommendation in its 2014 report titled ''Federal Real Property: More Useful Information to Providers Could Improve the Homeless Assistance Programs.'' [2] Throughout the proposed rule, the Agencies reorganized and renumbered various existing sections of their respective regulations.

1. Definitions

The proposed rule sought to remove definitions that were no longer relevant, revise other definitions to conform to existing legislation, incorporate new definitions, some of which were used but not defined in the Title V regulation; and provide clarity and consistency for potential Title V applicants regarding the Agencies' roles and requirements. The Agencies proposed that the definitions of *Applicant, Eligible organization, Excess property, Homeless, Landholding agency, Lease, Permit, Property, Screen,* and *Surplus property* be amended to provide consistent language across the Agencies' regulations, provide more clarity, and conform with statutory changes. The proposed rule sought to add definitions for *HUD website, Transferee, Transfer document, Substantial noncompliance, Related personal property,* and *State* for clarity and conformance with statutory requirements. The rule proposed to remove the definitions of *Regional Homeless Coordinator* and *State Homeless Coordinator* as they are no longer applicable. The rule also proposed to remove the definition of *ICH* and instead reference the term ''United States Interagency Council on Homelessness.''

2. Applicability

The Agencies proposed to expand the list of properties that are not subject to the joint regulation by adding (1) properties that are not subject to Federal Real Property Council reporting requirements; (2) buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 after October 25, 1994; (3) machinery and equipment that is not related personal property; (4) machinery and equipment that is related personal property but that GSA or the landholding agency chose to dispose of separate from the real property; and (5) excess or surplus buildings or fixtures that sit on land under the control of a landholding agency where the underlying land is not also excess or surplus. The Agencies also proposed clarifying changes to this section, including adding a citation where it previously did not exist; specifying that the existing language referencing properties ''subject to a court order'' referred only to court orders that, for any reason, precluded transfer for use to assist the homeless under Title V; and clarifying that the existing exclusion of mineral and air space rights from Title V processing referred to mineral and air space rights that are independent of surface rights.

3. Collecting Information From Federal Agencies

The Agencies proposed several changes to the information collection process under Title V. The proposed rule sought to codify HUD's existing practice of accepting property information from landholding agencies on an ongoing basis. The Agencies proposed that HUD's canvass of landholding agencies include information about previously reported properties only if the property's status or classification changed or if improvements were made to the property since the property was last reported to HUD. The Agencies proposed that HUD review properties with a change in status for suitability and repost the property information on the HUD website. The proposed rule sought to clarify that landholding agencies should respond to HUD's information collecting canvass in accordance with 40 U.S.C. 524 and that a completed property checklist is the vehicle for submitting property information to HUD.

4. Suitability Determination

The Agencies proposed several changes to the suitability determination process. The regulations did not provide a deadline for the landholding agency to respond to HUD's request for additional information in instances where HUD received an appeal request for review of a property that was determined unsuitable for homeless assistance use, and the regulations were also silent regarding the determination process after HUD received or did not receive the landholding agency's response. The Agencies proposed that unless HUD and the landholding agency agree to an extended period, the deadline for the landholding agency to respond to HUD's request for additional information would be 20 days from the date that the landholding agency is notified of the request to review the unsuitability determination. If the landholding agency fails to meet the deadline or request an extension, the Agencies proposed that HUD proceed with the appeal review using the property information provided in the survey it already has and information submitted in the appeal request provided by the representative of the homeless. The Agencies proposed that HUD act on requests for review where the landholding agency or GSA has failed to meet the deadline within 30 days of such deadline.

The Agencies also proposed to incorporate required statutory changes under FASTA to allow HUD to post suitability determinations on a HUD website or a successor technology that is equally accessible and available to the public. The proposed rule sought to update processes by removing the identified toll-free number and revising

[1] 88 FR 16834.

[2] *https://www.gao.gov/assets/gao-14-739.pdf.*

it to state that HUD will establish and maintain ''a toll-free number'' for the public to obtain specific information about Title V property reviewed for suitability. The Agencies proposed that persons with inquiries regarding property suitability and other Title V related questions be instructed to submit questions through the HUD Title V website, or such other method as HUD may require, and that persons with disabilities may also request an alternative method for submitting inquiries when it may be necessary as a reasonable accommodation under Federal fair housing laws.

5. Real Property Reported Excess to GSA

Under the regulations, landholding agencies were required to submit a report to GSA of properties determined as excess along with a copy of any HUD suitability determination. These sections in HUD's and GSA's regulations were proposed to remain substantially the same but proposed to be updated for clarity.

6. Suitability Criteria

The proposed rule sought to revise the criteria that HUD uses to determine suitability to make the criteria clearer and more user-friendly for both the Agencies and applicants by dividing the suitability criteria into two categories: (1) properties deemed suitable unless the properties have any of certain listed characteristics, and (2) properties having characteristics that would make the property presumptively unsuitable, unless the landholding agencies provide further information for HUD to determine the property suitable.

In the first category, the Agencies sought to revise the criteria relating to property located near a container or facility storing, handling, or processing flammable or explosive materials to provide for suitability if HUD can determine, based on information provided, that the property complies with the acceptable separation distance standards or that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place. The Agencies proposed to remove the reference to 2000 feet and the references to gasoline stations, tank trucks, above ground containers ''with a capacity of 100 gallons or less,'' and larger containers providing heating or power in favor of utilizing the more useful acceptable separation distance standards and excluding containers and facilities that are not hazards, as defined in 24 CFR 51.201. Additionally, the Agencies sought to add coastal barriers as a suitability criterion. The Agencies also proposed to rename the documented deficiencies criterion as ''Site Safety Conditions'' and focus that criterion solely on a property's physical characteristics.

The Agencies proposed to move the criteria regarding floodways, national security concerns, runway clear zones, and inaccessible property into the second category of criteria, as property presumed unsuitable unless information to enable HUD to determine it suitable is provided. The proposed rule also sought to remove the reference in the regulations to floodways that have been ''contained or corrected'' since the meaning of ''corrected'' was unclear and a floodplain that is ''contained'' might still adversely affect the use of portions of the site that are located within the ''contained'' floodway to assist the homeless.

The Agencies also included specific questions for public comment in the proposed rule regarding suitability criteria. The Agencies noted that they considered several changes to this section and did not expect the proposed changes to affect the number of properties deemed suitable.

7. General Policies of HHS

The Agencies proposed to add a section, General Policies of HHS, to mirror 45 CFR 12.3 instead of adopting that regulation by reference. The section highlights the minimum criteria for transfers of surplus property.

8. Expressions of Interest Process

Pursuant to FASTA, the time for eligible organizations to submit an expression of interest to HHS changed from 60 days to 30 days from the date of HUD's publication of suitability. The Agencies proposed to capture this change in the regulations along with HHS's proposal to accept such expressions of interest by email and an update to HHS's physical address. Additionally, the Agencies proposed to amend this section to clarify that HUD's determination of suitability does not mean a property is necessarily useable for the purpose stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

9. Application Process and Requirements

The Agencies proposed several changes to the application process based on current practice and statutory mandates. FASTA changed the time that an eligible organization must submit an initial application from 90 days to 75 days after HHS's receipt of an expression of interest, unless extended by HHS. Additionally, if HHS approves the initial application, then a final application, setting forth a reasonable financial plan, must be submitted within 45 days of HHS's approval of the initial application. The proposed rule sought to incorporate this two-stage application process outlined in FASTA that HHS currently follows.

FASTA also reduced the time for HHS to review an initial application from 25 days to 10 days of its receipt. The proposed rule sought to reflect this change. It also proposed revising the ranking system and criteria HHS uses to assess applications by proposing that an initial application be evaluated based on the three statutory criteria: services offered; need; and experience and that all criteria be of equal weight, with failure to meet any one criterion resulting in the application being disapproved.

The Agencies also proposed revisions to make the application requirements more clear, concise, and consistent with the instructions accompanying the application packet, including describing the specific document an applicant must submit with its application to demonstrate its ability to hold title to property for the requested purpose(s). The Agencies proposed that applicants certify, rather than merely indicate, that their use of the property and any modification(s) made to the property conform to all applicable building codes and local use restrictions, or similar limitations to ensure an applicant's proposed program is capable of being developed and operated following transfer without hindrances. The Agencies also proposed incorporating within the regulation the existing practice of denying any request for lesser portions of the listed real property. Additionally, the proposed rule sought to advise applicants that the description of the proposed program must also include how the applicant intends to implement the program to assist HHS in rendering a determination on the adequacy and timeliness of a proposed program and likelihood of operational success.

The Agencies also proposed additional updates to provide greater clarity regarding the application process. These proposed updates included (1) requiring that an applicant demonstrate both that there is an immediate need to acquire the property for the proposed program and the applicant's ability to utilize all of the Federal real property for which it is applying; (2) clarifying that an applicant is required to provide details concerning modifications to the property that need to be completed before the program can become operational; and (3) requiring

that an applicant ''demonstrate'' its financial ability to finance and operate the proposed program rather than merely ''indicate'' its financial ability to do so. Additionally, the Agencies sought to memorialize current practice that permits HHS to grant, to an otherwise approved applicant, a short-term lease when a zoning change is required or an applicant's financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing, enabling the approved applicant to gain site control of the property that may be required for funding and allowing additional time to provide HHS the requisite information to ensure the Federal Government's interest in the property is adequately protected. The proposed rule also sought to clarify property insurance requirements and the purpose thereof, thereby allowing for the omission of the reference to other provisions of the Agencies' regulations. Additionally, it proposed requiring that an applicant provide evidence that it has notified the local government of its application rather than simply indicating in its application that it has done so.

The Agencies also proposed revisions to clarify the requirements regarding the transfer of surplus property and to comply with FASTA. The Agencies proposed to incorporate HHS's current policy that transfers by deed will only be made after the appropriate certification that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations, omitting the need to reference other provisions of the Agencies' regulations.

10. Surplus Property Transfer Documents

The proposed rule sought to add an entirely new section regarding transfer documents to conform to legislative changes, and for clarity it proposed including relevant provisions of 41 CFR part 102–75 and 45 CFR part 12 pertaining to general terms and conditions of transfers. This proposed change was to improve the readability of the regulation and remove the need for additional cross-references. Additionally, the proposed rule sought to omit the requirement for reversion or abrogation of transferred property, at the discretion of HHS, should the property not be placed into use within 8 years to allow for more flexibility to resolve such issues on a case-by-case basis.

11. Compliance With the National Environmental Policy Act of 1969 (NEPA) and Other Related Acts (Environmental Impact)

The regulation already provided general application requirements as they pertained to environmental information. The proposed rule sought to expand these sections to clarify and to mirror mandates and policies currently required by NEPA and other related Acts.

12. No Applications Approved

The Agencies proposed codifying changes made by FASTA within the regulations. Under FASTA, Federal real properties can only be held for 30 days to permit homeless providers an opportunity to submit a notice of interest instead of the previous 60-day holding period. Additionally, FASTA requires GSA or the landholding agency to proceed with disposal of surplus property 75 days following receipt of an initial expression of interest if no initial application or requests for extensions have been received by HHS, or within 45 days after an approved initial application if no final application has been received. This means that no disposal action can be taken by GSA or the landholding agency, as appropriate, until all Title V actions are completed. The Agencies captured these changes in the proposed rule.

13. Utilization and Enforcement

The Agencies proposed adding a new section to clearly articulate a transferee's utilization requirements and potential enforcement actions that may be taken, at the discretion of HHS, should noncompliance occur. HHS's policies did not change but were included in the proposed regulation to clarify program requirements to applicants and transferees. This section also included the Federal Government's requirements of transferees in the event of a reversion action.

14. Other Uses

The proposed rule sought to clarify the requirements of transferees should a transferee request approval to utilize the property, or a portion thereof, for uses other than those stated in the approved original application.

15. Abrogation

The abrogation process was discussed in various sections of the regulation, and the Agencies proposed to more clearly articulate the instances in which HHS may abrogate the conditions and restrictions in the transfer document. The proposed rule sought to address the abrogation process in its own section for clarity and simplicity.

16. Compliance Inspections and Reports

For clarifying purposes, the Agencies proposed to add this section to include provisions of 45 CFR 12.14 pertaining to compliance inspections and reports. HHS's policies did not change but were included in the proposed regulation to be clearer for the public and remove the need for additional cross-references.

17. No Right of Administrative Review for Agency Decisions

Title V, as amended by FASTA, does not provide for internal administrative review of HHS application decisions. Accordingly, the Agencies proposed to codify HHS's existing policy that no agency reconsideration or appeal shall be granted. HHS's application decision constitutes final agency action in accordance with the Administrative Procedure Act (5 U.S.C. 704).

18. Public Notice and Holding Period Under FASTA & Technical Changes

The proposed rule sought to make changes throughout HUD's and GSA's regulations and implement FASTA amendments to the McKinney-Vento Act, including that suitability determinations for properties are published electronically on the HUD website and that HUD will post a list of all properties reviewed, including a description of the property, its address, and classification, on the HUD website, rather than in the **Federal Register**. The language ''on the HUD website'' was proposed to replace ''**Federal Register**'' as necessary, throughout HUD's and GSA's regulations. In addition, the Agencies proposed to remove identification of a specific toll-free number to accommodate any necessary changes to the toll-free number in the future and more closely align with 42 U.S.C. 11411(c)(2)(C). The proposed rule also sought to clarify that the list of all properties published on the HUD website is sent to the United States Interagency Council on Homelessness within the same timeframe as HUD's publishing of the list of all reviewed properties to the HUD website. Requirements for the agency annual suitable property report were proposed to be included in the regulations along with clarification that the list of all properties published in the **Federal Register** no later than February 15 of each year would be a list of all properties from the agency annual suitable property reports, reported to HUD. To reflect the transition to publishing electronically, the proposed rule also sought to remove the

requirement for physical copies of the list of all properties published in the **Federal Register** be available for review in HUD buildings. Additional technical changes were also proposed throughout the regulations for clarity.

B. Changes to HUD's Regulations

The proposed changes to regulations found at 24 CFR part 581 related to each agency's responsibilities under the McKinney-Vento Act to provide the public with a comprehensive understanding of the Title V process. HUD proposed that part 581 continue to contain HUD's responsibilities under Title V while also publishing all changes discussed above, including new sections explained above in sections II.A.10, II.A.11, and II.A.13 through II.A.16.

C. Changes to GSA's Regulations

The regulations found at 41 CFR part 102–75, subpart H, relate to GSA's role in the use of Federal real property to assist the homeless along with the other Agencies' responsibilities. Since this regulation was published jointly with HUD and HHS, GSA proposed to update subpart H to include all changes discussed above, including new sections explained above in sections II.A.10, II.A.11, and II.A.13 through II.A.16. GSA also proposed to update subpart H to include a section on waivers previously contained in HUD's regulations at 24 CFR 581.13 but never published in GSA's regulations. Lastly, GSA proposed renumbering sections in subpart H throughout the regulation as noted above.

D. Changes to HHS's Regulations

The regulations found at 45 CFR part 12a solely relate to HHS's portion of the proposed rule. HHS proposed to update part 12a to include all changes discussed above, except sections that are not applicable to HHS, which include sections II.A.3 through II.A.6. HHS proposed that the changes to part 12a also include new sections explained in sections II.A.10, II.A.11, and II.A.13 through II.A.16.

III. This Final Rule

In response to public comments and in further consideration of issues addressed at the proposed rule stage, the Agencies are publishing a final rule with limited changes, resulting in a final rule that is similar to the proposed rule. The changes the final rule makes are discussed in turn.

A. Changes Within the Applicability Section

In paragraph (b)(12) of the ''Applicability'' section found at 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2, the Agencies are removing the proposed phrase ''owned by'' and replacing it with ''under the control of'' for accuracy, as no landholding agency ''owns'' real property because all real property is owned by the United States.

B. Changes Within the Definitions Section and Other Related References

In the ''Definitions'' section, the final rule also provides clarity regarding its use of the word *Encumbrance,* defining it to mean any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period. The Agencies concluded that failure to include this definition could have the unintended effect of both confusing transferees as to what actions require HHS's official written approval, as well as hindering HHS's statutorily authorized enforcement efforts. In alignment with this addition to the regulation's definitions, the Agencies also remove terms like ''sell'' or ''lease'' in the ''Transfer documents'' section found at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7 when found alongside the term ''encumbrance,'' as those terms are now obsolete.

The definition of *Eligible organization* is also updated in this final rule to centralize the discussions about the requirements of eligible organizations found in other portions of the rule. In line with this, the Agencies also omit proposed paragraph (c) of 24 CFR 581.9, 41 CFR 102–75.1168, and 45 CFR 12a.3 related to the requirements of eligible organizations and proposed language in paragraph (a)(2) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 related to the application process and requirements, as the revision of the definition rendered the restatements redundant and created the possibility of causing confusion.

Lastly, the final rule text omits the proposed definition of *Substantial Noncompliance* which was initially included in the proposed rule to give applicants and their lenders assurance that property generally does not get reverted based on technical violations of deed language or regulatory requirements. After further consideration, the Agencies have determined that inclusion of the term *Substantial noncompliance* unduly limits HHS's ability to initiate compliance action when warranted. As such, this final rule omits the proposed definition of *Substantial noncompliance* from the proposed rule.

C. Changes Within the Application Process and Requirements Section and Other Related Sections

Within paragraph (a)(1) of the ''Application process and requirements'' section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5, this final rule adds clarifying language to memorialize existing policy intended to prevent disparate treatment of applicants by deed as opposed to applicants who initially apply for a lease but later wish to convert the lease to a deed. The Agencies determined that failure to include this provision would allow applicants to be treated differently and create ambiguity, which the Agencies aim to prevent. Additionally, in response to public comments regarding the need for site control to obtain financing, the final rule adds language to indicate that should an applicant wish to convert a lease to a deed, HHS will issue a letter of commitment to a lessee indicating that provided its application meets all application criteria, including securing all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

The Agencies received public comments that addressed financing and expressed concern as to how the Title V program would be funded. As a result, this final rule adopts clearer language regarding financing by changing proposed references to funding requirements contained in paragraph (a)(7)(iv) of the ''Application process and requirements'' section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 from an applicant showing an ''ability to obtain'' funds to showing that it ''will obtain'' such funds. This revision clarifies applicant requirements and clarifies that transferees are required to fund property and program operations. The Agencies' experience administering the Title V process has provided decades of examples showing that most programs have failed for financial reasons; therefore, it is critical that a solid financial plan is in place, and this clarification supports that end goal.

This final rule also adds language to the property insurance requirements in paragraph (a)(9) at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 and omits unnecessary detail found in paragraph (f)(6) of the ''Transfer documents'' section proposed at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7. The added language in paragraph (a)(9) addresses existing issues regarding insurance proceeds and

makes clear that, in the event of a covered loss, the transferee must hold all proceeds in trust and obtain HHS's written concurrence before disbursing funds. The Agencies reason that this change would ensure that the property is returned to its previous or better condition, that homeless services are resumed, and the Federal Government's residual interest in the property is protected. The Agencies find this clarification necessary as failure to include it may unnecessarily hamper the Federal Government's efforts to both ensure that the property is repaired and recover the funds if the property is not repaired. Given this added clarification, the Agencies found the detail in paragraph (f)(6) of the ''Transfer documents'' section within the proposed rule to be extraneous and potentially confusing, and thus this final rule omits the proposed language.

This final rule also provides additional detail about HHS's discretion in paragraph (d)(1) of the ''Application process and requirements'' section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5, by including the phrase ''if time permits'' to accompany the existing language regarding HHS's discretion to return an application or ask an applicant to provide additional information. This additional detail gives the applicant a greater understanding of the conditions under which HHS will exercise this discretion.

D. Changes Within the Action on Approved Applications Section

This final rule omits language in paragraph (a)(2)(i) of the ''Action on approved applications'' section proposed at 24 CFR 581.12, 41 CFR 102–75.1171, and 45 CFR 12a.6 regarding leases for approved unutilized and underutilized properties, as it conflicted with the definition of *Lease* and maintained the landholding agency's ability to determine the length of time that the property will be available. Additionally, in the case of permits, the prior language was inconsistent with the statutory definition thus the Agencies determined these changes to be necessary.

E. Changes Within the Transfer Documents Section

For accuracy, the Agencies provide changes in paragraph (f)(12) of the ''Transfer documents'' section found at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7 regarding the time period of 30 years for which the terms and conditions apply for a property. The revision clarifies that public benefit is measured in months rather than years (a 360-month period rather than a 30-year period) and improves consistency because abrogation procedures also use months. This ensures that a transferred property is utilized for a full 360-month period, not simply during the course of a 30-year period, particularly in instances of noncompliance. As such, the change reflects the fact that the period of restriction may be amended to account for lack of use or change in program. Using years in most cases would be cumbersome and inaccurate.

In paragraphs (i) and (f)(2) at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7, this rule clarifies HHS's existing policy of requiring ''written'' consent by clearly stating that written consent must be obtained for abrogation approvals and will be required for any encumbrances of the property for any purposes other than those set forth in an approved plan. The Agencies determined that the clarification and consistency for applications was necessary to avoid confusion in the administration of the program. Additionally, the Agencies received public comments suggesting that the proposed rule does not provide applicants sufficient time to renovate surplus property for use in homelessness assistance programs, particularly affordable permanent housing development projects. As a result, the Agencies revised paragraph (f)(1)(ii), to provide a transferee an additional 12 months (or up to a total of 48 months from the date of transfer) to place the property into use.

Additionally, as explained above in section III.C., which discusses changes within the Application Process and Requirements section, this final rule also revises paragraph (f)(6) of the ''Transfer documents'' section within the proposed rule in relation to property insurance requirements.

F. Changes to Other Sections of the Rule

In the ''Other uses'' section found at 24 CFR 581.19, 41 CFR 102–75.1177, and 45 CFR 12a.11, the Agencies add a requirement that the transferee lengthen the time of restrictions in applicable situations to mirror existing HHS policy and clarify that a grantee may not benefit from its non-use of the property or noncompliance with the approved program of use. The Agencies also provided greater clarify for transferees regarding the consequences of failure to abide by the requirements outlined for other uses of the property.

Additionally, throughout the regulation, the Agencies provide minor adjustments to word choice, such as changing ''United States'' to ''Federal Government'' in the ''Application process and requirements'' section proposed at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 or ''useable'' to ''fit for use'' in the ''Expression of interest process'' section proposed at 24 CFR 581.10, 41 CFR 102–75.1169, and 45 CFR 12a.4. These changes are made to provide greater clarity for the public.

Additionally, the Agencies incorporated provisions of severability proposed at 45 CFR 12a.15, 24 CFR 581.23, and 41 CFR 102–75.1182 to clarify that the rule's provisions are intended to be severable from one another. Because the various components of this rule have functions that can operate independently from other portions of the rule, should a court find any of these revisions invalid, the Agencies believe that severability is both proper and practical. Furthermore, the Agencies' roles in the Title V process are distinct and separate, requiring independent judgement and action by each agency. The Agencies agree that successful legal challenges to provisions of the rule that affect one agency should not impair other provisions of the rule that are related to another agency. For these reasons, this rule adds a severability clause to each agency's portion of the rule.

IV. Public Comments

The public comment period for the proposed rule closed on May 19, 2023. The Agencies received a total of 23 comments regarding the proposed rule. HUD received 11 comments and HHS received 12 comments related to the rule. These comments were received from individuals, non-profit housing organizations, and nonprofit legal service providers. The Agencies have provided collective responses to the comments received.

A. Support for the Proposed Rule

Commenters expressed general support for the proposed rule. Commenters stated that they believed the proposed rule would provide needed services and homes to persons experiencing homelessness, including women, children, and older people, which would improve access to shelter and healthcare and noted a need for housing and services for persons experiencing homelessness. One commenter noted a disruption created by laws against encampments and stated that there is a need for persons experiencing homelessness to have access to proper shelter. Another commenter noted an increase in the population of homeless individuals. One commenter stated that the proposed rule would provide suitable properties

for persons experiencing homelessness while not hindering the Federal Government.

Commenters also expressed support for updating the terminology in the Title V program. Commenters stated that updating the terminology used by the Agencies will clarify the meaning of words such as ''applicants,'' ''homelessness,'' and other terms. Commenters also noted that the proposed rule would clarify which properties are affected by the Title V program. One commenter stated that updating the terminology will also aid policymakers and citizens in understanding the target population affected by the proposed rule.

Commenters also noted the impact of the rule on specific groups. One commenter stated that the proposed rule would revise current terminology to include survivors of intimate partner violence in the definition of ''homeless.'' This commenter stated that a lack of housing resources and financial assistance remains a significant reason why survivors of intimate partner violence are less likely to leave abusers. Several commenters stated that veterans also constitute a significant portion of the homeless population. One commenter stated that the rule will benefit veterans experiencing homelessness.

Commenters also supported provisions in the proposed rule that would change the program requirements from having an applicant ''indicate'' ability to finance and operate a proposed program to having them demonstrate their ability to do so. Commenters were supportive of the change, stating that it would allow applicants to more easily apply to the Title V program to receive available Federal properties.

Commenters noted that the proposed rule would have positive implications for healthcare on the Federal level. One commenter stated that the proposed rule would help the Federal Government provide better assistance to those in need of housing and would improve Federal supervision over facilities to prevent or punish violations of Federal regulations. Another commenter stated that Federal properties having facilities to connect with mental health treatment, regular primary care, and substance use disorder treatment can help to reduce the number of illnesses and increase the possibility of people seeking medical care. One commenter also stated that the proposed rule provided greater clarity regarding the location of hazardous items close to safe items.

The Agencies' Response: The Agencies appreciate the support for the proposed rule. The Agencies agree there is a need for housing and services for persons experiencing homelessness in their communities. The Title V program recognizes the needs of homeless individuals by facilitating the transfer of suitable and available excess, surplus, unutilized, and underutilized Federal properties for homeless assistance. The Agencies also agree that updating terminology used by the Agencies will help clarify the processes in the Title V program and assist the Agencies in implementing the Title V program.

The Agencies also support revising the definition of ''homeless'' in the rule to the statutory definition of ''homeless'' at 42 U.S.C. 11302, as Public Law 117–103 recently amended the part of the definition of ''homeless individual'' in subsection (b) of 42 U.S.C. 11302 to further address those who are experiencing trauma or lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, and other dangerous, traumatic, or life-threatening conditions relating to the violence against the individual or a family member in the individual's or family's current housing situation, including where the health and safety of children are jeopardized; has no other safe residence; and lacks the resources to obtain other safe permanent housing.

The Agencies acknowledge and share the commenters' concerns regarding veterans experiencing homelessness. The Agencies intend the revisions to the Title V program in the rule to facilitate the transfer of suitable and available excess, surplus, unutilized, and underutilized Federal properties for homeless assistance, including veterans experiencing homelessness. Lastly, the Agencies agree that the rule makes the suitability criteria clearer for both the Agencies and applicants in the Title V program.

B. Concerns Regarding Underuse of Title V and Impact on Underserved Communities

Commenters stated that the program created under Title V of the McKinney-Vento Act has been underused. One commenter stated that, despite improvements in the rate of applications and approvals as a result of the Federal Assets Sale and Transfer Act of 2016 (FASTA), Title V's overall approval rates have remained low. The commenter also stated that Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' requires executive agencies to recognize and work to redress inequities in their policies and programs that serve as barrier to equal opportunity. This commenter stated that due to past racially discriminatory housing policies, Black, multiracial, American Indian/Alaskan Natives, and Native Hawaiians and Pacific Islanders disproportionately experience homelessness.

The Agencies' Response: Regarding underutilization of the Title V program, the Agencies note that the number, condition, and location of properties are not solely under the Agencies' purview, but instead are solely based on determinations made by all Federal Landholding Agencies as to what properties are no longer needed to fulfill their agency mission. Additionally, HHS is required to disapprove any application where an applicant fails to meet any one of the statutory and regulatory application review criteria. While HHS supports more Title V transfers, HHS also has no control over the number of and quality of applications it receives.

With regard to the commenter's note on advancing racial equity, the Agencies acknowledge the disproportionality in the homelessness system and is continuing efforts to address inequities and barriers in obtaining housing facing Black, multiracial, Native American, Native Alaskan, Native Hawaiians and Pacific Islanders.

C. Concerns Related to Practical and Procedural Issues

Commenters provided concerns related to both practical and procedural issues. Commenters noted a lack of clarity regarding where available properties can be accessed to inquire for use for an emergency shelter. Additionally, providing a procedural suggestion, one commenter stated that the proposed rule was a necessary update that should be completed at least every five years, which would allow the Agencies to stay up to date with changes in the Agencies' practices and procedures as well as outdated information. One commenter stated they agree with utilizing Federal surplus real property to house the homeless by giving possession of the property to State and local governments, but the commenter also stated that the proposed rule would ''be giving more 'power' to the government and taking it away from the citizens.'' Additionally, a commenter stated that as the Title V program is tax exempt, the Federal Government will have to ''come up with ways on how to fund this program in order to make it successful,'' which may include use of certain grants. The

commenter further stated that the Federal Government budgeting system will be affected since the Federal Government will need to propose a way to invest in this program. The commenter also said that the program will put ''more pressure on the Federal government to have to develop certain organizations and vouchers that will assist this program.''

The Agencies' Response: In reference to the comments about lack of clarity regarding where available properties can be accessed to inquire about use for an emergency shelter, HUD posts properties determined to be suitable to assist the homeless on its website (*https://www.hud.gov/program_offices/comm_planning/titlev/weekly*). The toll-free Title V Information Number is (800) 927–7588. HUD also transmits to the United States Interagency Council on Homelessness (USICH) a copy of the list of all suitable properties and, no later than February 15 of each year, publishes a list of all properties in the annual suitable property reports, reported to HUD in the **Federal Register**. Please note that HUD would only determine that properties are suitable to assist the homeless in accordance with the requirements and specific criteria described in the proposed rule and not that property would be appropriate for a particular use such as an emergency shelter.

In response to the suggestion that the Agencies update procedures every five years, the Agencies note that rulemakings under Title V of the McKinney-Vento Act are conducted under the Administrative Procedure Act (APA) (5 U.S.C. 551–559). Rulemaking, in compliance with the APA, is a process with many requirements that may, depending on the complexity of the proposed rule and other factors, take years to complete. In addition, it takes time for landholding agencies and representatives of the homeless to update their processes and procedures to follow any changes in a revised final rule. It is generally not necessary or feasible to complete rulemaking every five years and such an artificial timeline would be unduly burdensome on the Agencies and divert resources from the efficient operation of the Title V program.

The Agencies are not clear what the commenter means when stating that the proposed rule will take power away from the citizens and give it to the government. The commenter does not explain further what more power the government would have and the Agencies believe that the commenter could be referencing the continued government possession of the property if transferred to a state or local government. Title V authorizes the transfer of excess, surplus, unutilized, and underutilized Federal properties that are determined to be suitable and available for use to assist the homeless to representatives of the homeless. A representative of the homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless. To the extent the Title V program takes anything away from citizens, the Agencies assume the commenter meant that, had the property been sold instead of placed into the Title V program, citizens could lobby for the sale proceeds to be allocated elsewhere.

Lastly, in regards to the commenter's concerns about budgeting and funding, a recipient of Federal surplus real property (which is transferred at no-cost) has the responsibility of financing all aspects of the transferred property and program operations. HHS appropriations are limited to the administration of the Title V program and no other funds are available to HHS for the program. While Federal grants may be a source of financing, transferees are not entitled to Federal grants and Federal grants are not the only available source of funding. Transferees utilize various methods to fund projects including State and local grants, loans, fundraising, etc. Additionally, when a property is transferred, the Federal Government no longer has custody and accountability of the property saving the Federal Government from those expenses.

D. Concern Regarding HHS's Interpretation of Current Regulations

One commenter characterized HHS's interpretation of the current regulations and the proposed rule as preventing homeless service providers from using Federal tax credits, including Low Income Housing Tax Credits (LIHTCs) to fund surplus property acquisition. This commenter stated that it believed HHS's interpretation of the regulations governing Title V is that applicants must show they have full funding for a project and that this interpretation is without statutory or regulatory basis. The commenter stated that HHS denies applicants who cannot demonstrate they have attained complete funding at the time of their application, even if the applicant has a history of successfully funding and implementing projects. The commenter said that many affordable housing developments use sources of funding that cannot be committed to in advance, including allocations from city budgets and LIHTCs. The commenter stated that HHS's actions to deny applicants who cannot demonstrate that they have obtained complete funding in fact create an obstacle for applicants as it requires Title V applicants to secure funding before receiving a property while many funders require the applicants to secure property before providing funding. The commenter noted that while the proposed rule shows intention to help applicants by providing for a one-year lease to enable site control required for funding, the proposed rule does not meet the site control requirements of the LIHTC programs. The commenter stated that homeless service providers cannot obtain evidence of Title V site control without documentation of LIHTCs but cannot obtain LIHTCs without documentation of Title V site control. The commenter also referenced examples of organizations that it noted had been impacted by HHS's interpretation of the regulations to require that financing for a development project be secured at the time of application, as evidenced by HHS's denial of their applications.

The Agencies' Response: The Agencies appreciate the commenter's perspective. The Agencies would note that the proposed rule was written to clarify the minimum requirements for a financial plan to be considered reasonable. In so doing, the requirements for homeless service providers to obtain financing and for the Federal Government to protect its residual interest in the property were considered when drafting the rule. As the commenter stated, the rule provides for a one-year lease to enable site control by stating ''A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) [of the Application Process and Requirements section of this rule], but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing.'' While the commenter states Title V applicants cannot obtain LIHTCs without documentation of site control, the Agencies have approved multiple transferees that have acquired property via an initial lease and those transferees successfully obtained financing, including with LIHTCs. The Agencies

appreciate the commenter's concerns but believe there is evidence of prior successful applicants that provide evidence directly counter to the commenter's concerns and demonstrate that past projects have demonstrated that a lease is sufficient site control for purposes of obtaining financing.

Lastly, it is inappropriate to speak with particularity regarding any denial of a specific individual applicant's application through this final rule. Generally speaking, each application and applicant are different, and financing that may be acceptable for one applicant's proposed project may not work for another applicant's proposal. Additionally, HHS reviews all applications based on the same statutory and regulatory application criteria and holds applicants to the same standards. While HHS supports efforts to increase housing and supportive services to people experiencing homelessness, HHS is also required to protect the interests of the Federal Government and taxpayers in the property by ensuring that an applicant has the means to develop and operate a program.

E. Concern Regarding Allowed Time To Renovate Surplus Property

Commenters stated that neither the Title V regulations nor the proposed rule provided applicants sufficient time to renovate surplus property for use in homelessness assistance programs. A commenter stated that the requirement that an applicant begin operation of a property within 12 to 36 months is impossible to meet for many programs because affordable housing developments will usually take 4 to 7 years from acquisition to be brought into use. The commenter stated that the amount of time transferees have to put Federal property into use should be increased, which would greatly expand the number and types of affordable housing development available through Title V. Commenters recommended revisions to the language of the proposed rule under 24 CFR 581.14(f)(1)(ii), 45 CFR 12a.7(f)(1)(ii), and 41 CFR.102- 75.1172(f)(1)(ii) to strike language requiring that the property be placed into use within 12 months or 36 months from the date of transfer and add language that required operation within eight years of the date of the deed or lease or, for multi-phase projects, the date of completion of the first phase of the project.

The Agencies' Response: The Agencies appreciate the commenter's perspective. In the Agencies' experience administering the Title V program over the past 30 years, the majority of programs satisfactorily meet the timing requirement. In only rare instances and under unusual circumstances is the requirement not met. When the time period is not met, a transferee is required to make a nonuse payment until such time as the property is placed into full use. However, the Agencies acknowledge that this timing requirement may have precluded certain projects from being pursued. This final rule now provides HHS the discretion to waive the nonuse payment if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe. That ability for HHS to waive the nonuse payment should address the concern raised by commenters should unique circumstances arise and allow for HHS to consider those circumstances without disrupting program operations with a standard that has been generally met over the past 30 years. In response to commenters' concerns, the final rule also provides the transferee with a period of 48 months from the date of transfer to place the surplus property into use, allowing additional time for the transferee to conduct any appropriate updates to the property that may include additional construction of facilities or other major renovation.

F. Concern About Sanctions for Noncompliance

One commenter stated that Title V's current regulations do not provide recipients of Federal property sufficient time to cure potential issues before sanctions are enforced. This commenter stated that the proposed rule also does not provide transferees with a hearing or appeals process or clarification of HHS's protocols, including what constitutes various types of noncompliance. The commenter said that HHS has significantly unlimited discretion to have the property reverted back to the Federal Government, even in circumstances outside of the transferee's control. Commenters stated that, due to this lack of clarity from HHS, transferees who received Federal property through the Title V program face a significant risk of reversion back to the Federal Government, which deters potential project managers and partners from projects. A commenter also stated that the risk of reversion is also problematic for financing projects with tax credit investors and lenders.

A commenter recommended adding new language to the rule to create the opportunity for transferees to cure ''inadvertent noncompliance'' as well as for investors and lenders to participate in the process, encouraging further investment in Title V properties. The commenter stated that reversion is an unnecessary sanction in the Title V program as other methods may be used for enforcement.

The Agencies' Response: The Agencies appreciate the commenters' perspectives. Potential applicants are made aware of noncompliance sanctions at 45 CFR 12a.10, which notes sanctions that HHS may impose should a transferee breach one or more of the transfer terms. Any risk of reversion or other sanction would then also be known for partners for financing projects when potential applicants are made aware of the terms of their award. These sanctions are necessary to preserve the integrity of the program and ensure that transferred property is being properly utilized to serve homeless communities and for no other purpose. HHS takes into consideration the circumstances of the noncompliance for each action when determining the appropriate enforcement action tailored to the type of noncompliance. For example, reversion could be a remedial measure for noncompliance, but HHS makes every attempt to work with the transferee to resolve a matter of noncompliance prior to initiating a reversion action. In situations of administrative or technical noncompliance where paperwork may have been entered or submitted in error, HHS may direct corrective action within an appropriate time period prior to indicating any potential for reversion of the property. During a cure period, HHS may request additional information, or the party may provide additional materials for HHS's consideration when determining what sanctions for noncompliance may be issued. If ultimately HHS determines that reversion is the appropriate sanction, both GSA and the Department of Justice must concur in HHS's decision to revert property before a court action can be initiated.

G. Suggestion To Repurpose Properties

One commenter stated that to create more affordable housing, more properties should be repurposed under the Title V: Federal Surplus Program for use by the homeless services system. This commenter noted that the U.S. Interagency Council on Homelessness recommended increasing the number of properties that are repurposed for use by the homeless services system in the Title V: Federal Surplus Property Program to expand affordable housing.

The Agencies' Response: The Agencies appreciate this commenter's perspective. Through process

improvements implemented by HUD in this final rule, along with more focused outreach to homeless service providers, the intent is to highlight the most usable properties and increase as much as possible the use of properties transferred through the Title V process.

H. Suggested Changes to the Proposed Rule

One commenter suggested that language be added to the rule to allow applicants to submit letters of intent and financing commitments in order to show their ability to obtain funding. This commenter stated that this change would be consistent with the Agencies' underlying statutory authority and allow the agencies to approve more applications for surplus Federal property to fulfill the underlying purpose of the Title V program: to affirmatively further fair housing.

Another commenter noted support for the proposed rule's requirement for transferees to allow HHS to conduct compliance inspections but suggested adding a mandatory bi-annual inspection requirement to the proposed rule. The commenter stated that these inspections will set a standard for all persons who are considering using the facility for needs. Additionally, commenters stated that adding a bi-annual inspection requirement would demonstrate care on the part of the Agencies for the sustainability of the building as well as that proactive and preventative maintenance among real estate companies.

Another commenter suggested the proposed rule account for persons with disabilities in addition to persons experiencing homelessness and that the rule include giving property to individuals with disabilities and individuals experiencing homelessness to create homesteads.

One commenter noted the stigmatization of homeless individuals, the potential causes and effects of homelessness, and the role of the Federal Government in addressing homelessness. The commenter stated that the government should allocate funding to building group homes for homeless individuals in different zip codes.

One commenter stated that they recommend using high-end hotels at billionaires' expense to house disadvantaged people.

The Agencies' Response: The Agencies appreciate the commenter's suggestion to allow for letters of intent and financing commitment. The Agencies have concerns about the practical application of this, as what may be acceptable in one situation may be unacceptable in another. HHS's review of a financial plan focuses on individual proposals in light of specific project and program plans, the applicant's experience and resources, and conditions of the requested property. It is an applicant's responsibility to ensure its application presents all information requested to set forth a reasonable financial plan as defined at 45 CFR 12a.5(a)(7), evidencing the adequacy and certainty of funding to carry forth the proposed program. A reasonable financial plan cannot be fully satisfied merely by letters of intent, as letters of intent are not contractual or binding. Applicants are not prohibited from submitting letters, but as indicated above, HHS would assess them in its evaluation of the entire financial plan to understand whether any letter or submitted information is relevant to HHS's determination that the financial plan is satisfactory.

Due to the short 15-day timeframe imposed on HHS, by statute, to review an applicant's financial plan, HHS's evaluation is limited to the content within the application. If the applicant does not present evidence in its financial plan that the government's interest is protected, HHS may deny an application or approve an application for lease acquisition with an opportunity to acquire the property by deed once an applicant satisfies HHS's requirements to ensure that the Federal Government's interest in the property is adequately protected. A lease to a property has proven to be acceptable site control for purposes of obtaining financing.

Regarding the suggestion to add a mandatory bi-annual inspection into the rule's compliance requirement, the Agencies would note that the proposed rule at 45 CFR 12a.13 requires that transferees allow HHS to conduct compliance inspections and submit, at a minimum, annual utilization reports regarding the operation and maintenance of the property. As written, HHS has the discretion to conduct compliance inspections and request property reports at any time a transferee is under the period of use restrictions, which is useful, particularly in instances of noncompliance. HHS determines when and how often to conduct inspections based on various circumstances, including but not limited to, open compliance cases, issues reported by adjacent property owners, length of time since last inspection, etc. HHS takes compliance action to ensure transferred property is both properly maintained and operated to provide services to the homeless.

In reference to one commenter's suggestion that the Agencies create homesteads for individuals with disabilities and those experiencing homelessness, Title V authorizes the transfer of excess, surplus, unutilized, and underutilized Federal properties that are determined to be suitable and available for use to assist the homeless. While many persons who meet the definition of homeless may also have a disability, Title V does not permit properties under Title V to be transferred to assist persons with a disability who do not meet the definition of homeless.

Lastly, in reference to the suggestion to use hotels or build group homes for homeless individuals, the commenter's proposal is not within the scope of the program. Title V of the McKinney-Vento Act only applies to excess, surplus, unutilized, and underutilized Federally-owned properties and does not apply to privately owned properties such as hotels. Additionally, the Title V program does not provide funds to construct or rehab housing for the homeless.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094, a determination must be made by the Office of Management and Budget (OMB) regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the Executive order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 amends section 3(f) of Executive Order 12866, among other things.

This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (although not a significant regulatory action under section 3(f)(1) the order). The Agencies prepared an initial Regulatory Impact Analysis (RIA) that

addresses the costs and benefits of the rule and is part of the docket file for this rule.

Environmental Review

Actions resulting from this rule amendment may constitute ''major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not specifically required for purposes of the rule amendment. Actions involving specific property transactions may require further NEPA analysis, however, as an action may not be covered by the categorical exclusion published at 47 FR 2414–02 on January 11, 1982. HHS will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of surplus property for homeless assistance purposes, ensure an environmental review and/or assessment is conducted, if applicable, and appropriately document the proposed transaction, in keeping with applicable provisions of NEPA.

The Environmental Assessment and Finding of No Significant Impact (FONSI) issued when the proposed rule was published remain applicable to this final rule. The FONSI is available for public inspection on *www.regulations.gov.*

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. This final rule does not impose any Federal mandate on any State, local, or Tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule imposes no additional requirements on a substantial number of small entities as defined by the RFA. The rule conforms the Agencies' existing regulations with required statutory changes under the Federal Assets Sale and Transfer Act of 2016 and other legislative changes, and to address certain issues that have arisen since the inception of the program. This rule also provides for HUD's suitability determinations to be published electronically rather than in the **Federal Register**. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Paperwork Reduction Act

The information collection requirements for part 581 contained in this rule pertain to HHS's Title V application. HHS's information collection requirements have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 0937–0191. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, the Office of Information and Regulatory Affairs in OMB has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects

24 CFR Part 581

Administrative practice and procedure, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

41 CFR Part 102–75

Federal buildings and facilities, Government property management, Rates and fares, Surplus Government property.

45 CFR Part 12a

Grant programs—health, Grant programs—housing and community development, Government property, Homeless, Housing, Public assistance programs, Surplus Government property.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Accordingly, for the reasons stated above, HUD amends 24 CFR part 581 as follows:

PART 581—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

■ 1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 11411 note; 42 U.S.C. 3535(d).

■ 2. Amend § 581.1 as follows:
■ a. Revise the definitions of *Applicant* and *Eligible organization;*
■ b. Add the definition of *Encumbrance* in alphabetical order;
■ c. Revise the definitions of *Excess property* and *Homeless;*
■ d. Add the definition of *HUD website* in alphabetical order;
■ e. Remove the definition of *ICH;*
■ f. Revise the definitions of *Landholding agency, Lease, Non-profit organization, Permit,* and *Property;*
■ g. Add the definition of *Related personal property* in alphabetical order;
■ h. Remove the definition of *Regional homeless coordinator;*
■ i. Revise the definition of *Screen;*
■ j. Add the definition of *State* in alphabetical order;
■ k. Remove the definition of *State homeless coordinator;*
■ l. Revise the definitions of *Suitable property* and *Surplus property;* and
■ m. Add the definitions of *Transfer document* and *Transferee* in alphabetical order.

The revisions and additions read as follows:

§ 581.1 Definitions.

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

* * * * *

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the

Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

* * * * *

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with ''homeless individual'' and ''homeless person.''

* * * * *

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

* * * * *

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local, and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

* * * * *

■ 3. Revise §§ 581.2 through 581.12 to read as follows:

Sec.

§ 581.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 581.3 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described in this section, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess, or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

§ 581.4 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in § 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 581.6.

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 581.7(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of the notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.,* HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.,* that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 581.7, upon receipt of which HUD will promptly publish the determination on the HUD website.

§ 581.5 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the preceding sentence, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will

complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days regarding the availability of the property. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with 41 CFR part 102–75. (See 41 CFR 102–75.1220, 102–75.255, and 102–75.350.)

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in 41 CFR 102–75.965.

§ 581.6 Suitability criteria.

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C, and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or successor guidebook) from any stationary above-ground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site safety conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases in paragraphs (b)(1) through (4) of this section, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.,* can be reached only by crossing private property and there is no established right or means of entry).

(2) *National security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.,* where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

§ 581.7 Determination of availability for suitable properties.

Within 45 days after receipt of notification from HUD pursuant to § 581.4(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(a) In the case of unutilized or underutilized property—

(1) An intention to declare the property excess;

(2) An intention to make the property available for use to assist the homeless; or

(3) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 581.6.

(b) In the case of excess property which has been reported to GSA—

(1) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(2) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

§ 581.8 Public notice of determination.

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all State and regional homeless coordinators area-relevant portions of the list. The USICH will

encourage the State and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 581.3(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

§ 581.9 General policies of HHS.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to 45 CFR 12a.10.

§ 581.10 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to § 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 581.11 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 581.1.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's

initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and Titles II or III of the Americans with Disabilities Act and implementing regulations at 28 CFR part 35 or 36, as applicable. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 581.10(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as

specified in paragraph (a)(7) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 581.12 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

■ 4. Add §§ 581.14 through 581.23 to read as follows:

Sec.

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§ 581.14 Surplus property transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an ''as is, where is'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this part, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 581.18 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 581.19.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 581.20.

§ 581.15 Unsuitable properties.

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if an appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 581.4(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability.

Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ 581.16 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 581.17 No applications approved.

(a) At the end of the 30-day holding period described in § 581.10(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 581.18 Utilization and enforcement.

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 581.20;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 581.19 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 581.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 581.20 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 581.21 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 581.22 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

§ 581.23 Severability.

Any provision of this part held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

GENERAL SERVICES ADMINISTRATION

Accordingly, for the reasons stated above, GSA amends 41 CFR part 102–75 as follows:

PART 102–75—REAL PROPERTY DISPOSAL

■ 5. The authority citation for part 102–75 continues to read as follows:

Authority: 40 U.S.C. 121(c), 521–523, 541–559; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

■ 6. Revise subpart H to read as follows:

Subpart H—Use of Federal Real Property To Assist the Homeless

Sec.

Definitions

§ 102–75.1160 What definitions apply to this subpart?

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with ''homeless individual'' and ''homeless person.''

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this subpart, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 102–75.1165.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1165.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Applicability

§ 102–75.1161 What is the applicability of this subpart?

(a) This subpart applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding

agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this subpart.

Collecting the Information

§ 102–75.1162 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described in this section, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess, or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

Suitability Determination

§ 102–75.1163 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in 24 CFR 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1166.

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1166(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of the notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.,* HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.,* that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal

request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 102–75.1166, upon receipt of which HUD will promptly publish the determination on the HUD website.

Real Property Reported Excess to GSA

§ 102–75.1164 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the preceding sentence, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with this part. (See §§ 102–75.1220, 102–75.255, and 102–75.350.)

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in § 102–75.965.

Suitability Criteria

§ 102–75.1165 What are suitability criteria?

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C, and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or successor guidebook) from any stationary aboveground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site safety conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases in paragraphs (b)(1) through (4) of this section, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.,* can be reached only by crossing private property and there is no established right or means of entry).

(2) *National security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.,* where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

Determination of Availability

§ 102–75.1166 What is the policy concerning determination of availability statements for suitable properties?

Within 45 days after receipt of notification from HUD pursuant to § 102–75.1162(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(a) In the case of unutilized or underutilized property—

(1) An intention to declare the property excess;

(2) An intention to make the property available for use to assist the homeless; or

(3) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 102–75.1165.

(b) In the case of excess property which has been reported to GSA—

(1) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(2) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

Public Notice of Determination

§ 102–75.1167 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all State and regional homeless coordinators area-relevant portions of the list. The USICH will encourage the State and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 102–75.1162(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

General Policies of HHS

§ 102–75.1168 What are the general policies of HHS?

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to 45 CFR 12a.10.

Expression of Interest Process

§ 102–75.1169 How may eligible organizations express interest in properties to assist the homeless?

(a) Properties published by HUD as suitable and available, pursuant to § 102–75.1167, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

Application Process and Requirements

§ 102–75.1170 How may eligible organizations apply for the use of properties to assist the homeless?

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but

either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 102–75.1160.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1 and 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146 and 44 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and 45 CFR part 84. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with

State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 102–75.1169(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(6) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

Action on Approved Applications

§ 102–75.1171 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this subpart and any other terms and conditions HHS and GSA determines are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

Surplus Property Transfer Documents

§ 102–75.1172 What documents are used for the transfer of surplus property for use to assist the homeless?

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this subpart will be disposed on an ''as is, where is'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this subpart will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this subpart, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 102–75.1176 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 102–75.1177.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the surplus property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title search; the transferee's legal fees; recordation expenses, etc. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the

realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 102–75.1178.

Unsuitable Properties

§ 102–75.1173 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if an appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 102–75.1163(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

Compliance With the National Environmental Policy Act of 1969 and Other Related Acts (Environmental Impact)

§ 102–75.1174 What are the requirements for compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact) for the transfer of Federal real property for use to assist the homeless?

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

No Applications Approved

§ 102–75.1175 What action must be taken if there is no expression of interest or approved application?

(a) At the end of the 30-day holding period described in § 102–75.1169(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

Utilization and Enforcement

§ 102–75.1176 What are the utilization and enforcement requirements for property transferred for use to assist the homeless?

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 102–75.1178;

(v) Make cash payments to the United States, as directed by HHS, equivalent to

the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

Other Uses

§ 102–75.1177 What are the requirements for other uses of a transferred property?

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 102–75.1160 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

Abrogation

§ 102–75.1178 What are the conditions of abrogation for property transferred to assist the homeless?

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

Compliance Inspections and Reports

§ 102–75.1179 What compliance inspections and reports are required?

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

No Right of Administrative Review for Agency Decisions

§ 102–75.1180 Is there a right of administrative review for agency decisions within HHS?

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

Waivers

§ 102–75.1181 May any requirement of this subpart be waived??

The Secretary of HUD may waive any requirement of this subpart (over which the Secretary of HUD has jurisdiction) that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers on the HUD website.

Severability

§ 102–75.1182 Are the provisions of this subpart severable?

Any provision of this subpart held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

§§ 102–75.1183–102–75.1219 [Reserved]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Accordingly, for the reasons stated above, HHS amends 45 CFR part 12a as follows:

■ 7. Revise part 12a to read as follows:

PART 12a—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

Authority: 42 U.S.C. 11411; 40 U.S.C. 550.

§ 12a.1 Definitions.

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with ''homeless individual'' and ''homeless person.''

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local, and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in 24 CFR 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 12a.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land,

and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 12a.3 General policies.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to § 12a.10.

§ 12a.4 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to 24 CFR 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, *rpb@psc.hhs.gov,* or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 12a.5 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 12a.1.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully

describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (*e.g.,* extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 45 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 45 CFR part 84. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 12a.4(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as

meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(7) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 12a.6 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.,* the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

§ 12a.7 Transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an ''as is, where is'' basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this part, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 12a.10 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period

of restriction by an entity other than the transferee in accordance with § 12a.11.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.,* environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 12a.12.

§ 12a.8 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National

Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 12a.9 No applications approved.

(a) At the end of the 30-day holding period described in § 12a.4(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 12a.10 Utilization and enforcement.

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 12a.12;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 12a.11 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 12a.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 12a.12 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 12a.13 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 12a.14 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

§ 12a.15 Severability.

Any provision of this part held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

Adrianne Todman,

Acting Secretary, HUD.

Robin Carnahan,

Administrator, GSA.

Xavier Becerra,

Secretary, HHS.

[FR Doc. 2024–25722 Filed 11–12–24; 8:45 am]

BILLING CODE 4210–67–P; 4150–24–P; 6820–14–P