DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 581

[Docket No. FR 6119–P–01]

RIN 2506–AC49

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–75

[3090–AK46]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12a

RIN 0991–AC14

Use of Federal Real Property To Assist the Homeless: Revisions to Regulations

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

ACTION: Proposed 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) each have distinct responsibilities in the administration of the Title V program, authorized by the McKinney-Vento Homeless Assistance Act. The program 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. In 2016, the Federal Assets Sales and Transfer Act amended Title V of the McKinney-Vento Homeless Assistance Act. This proposed rule would incorporate required statutory changes and current practices; update references and terminology that are now outdated; and revise procedures for more efficient program administration in the Agencies' regulations.

DATES: *Comment Due Date:* May 19, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All submissions must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments regarding a particular agency or its portion of the proposed rule may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500; Theresa M. Ritta, Program Manager, Real Property Management Services, Real Estate Logistics and Operations, Program Support Center, ATTN: [RIN: 0991–AC14], 5600 Fishers Lane, Suite 6W66, Rockville, Maryland 20852, respectively. Comments for GSA must be submitted electronically.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* The Agencies strongly encourage commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Agencies to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile (FAX) Comments. FAX comments will not be considered.

Public Inspection of Public Comments. HUD will make available all properly submitted comments and communications for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above HUD address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is 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.* Copies of all comments submitted are also available for inspection and downloading at *www.regulations.gov.*

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.*

Department of Housing and Urban Development: Juanita Perry, Senior Program Specialist, Office of Special Needs Assistance Programs, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20140; *title5@hud.gov;* telephone number (202)–402–3970 (this is not a toll-free number).

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, 1632, 1664–65), the Federal Property Management Reform Act of 2016 (114 Pub. L. 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 (codified at 40 U.S.C. 1303 note)).

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. Specifically, GSA screens real properties reported by a particular agency as excess with other Federal agencies to determine if they are required for use by any other Federal agency pursuant to 42 U.S.C. 11411(f)(3). Properties reported to GSA for disposal are submitted by GSA to HUD for a determination of suitability for use to assist the homeless. Pursuant to 42 U.S.C. 11411(b)(1)(B), after HUD makes its suitability determination, HUD reports the determination to GSA, and GSA notifies HUD whether there is a continuing need for the property within the Federal government. In practice, if GSA has information that there is a continuing Federal need for the property, GSA notifies HUD of the continuing need when GSA submits property information to HUD for the suitability determination. 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.

Pursuant to 42 U.S.C. 11411(a), HUD is the agency authorized to determine whether a property is suitable for homeless assistance use. HUD must request information from Federal landholding agencies regarding unutilized, underutilized, excess, and surplus Federal real properties (including land, buildings, and fixtures) based on the requirements of 42 U.S.C. 11411(a). As required by 42 U.S.C. 11411(a), HUD must determine which of those properties are suitable for homeless assistance no later than thirty days after receiving the information. Once HUD has determined a property is suitable for use to assist the homeless based on HUD's suitability criteria, HUD must then promptly notify each Federal agency of the suitability determination made pursuant to HUD's suitability criteria. The landholding agency must respond to HUD within 45 days regarding whether the property is available for use to assist the homeless. No later than 15 days after the end of the 45-day period, HUD must publish a list of all reviewed properties on the HUD website, whether HUD determined a reviewed property to be suitable for use to assist the homeless, and whether the property is available for application for use to assist the homeless. HUD must also publish annually all properties that were identified as suitable for use to assist the homeless, but were reported to be unavailable, and why the properties were unavailable, as required by 42 U.S.C. 11411(c)(1)(D). GSA also hosts a website listing property available for homeless assistance.[1]

Pursuant to 42 U.S.C. 11411(c)(1)(C), if HUD determines a property is not suitable for homeless assistance use, it must identify the reasons for its determination. If HUD determines a property is unsuitable for homeless assistance use, there is a 20-day holding period to allow any representative of the homeless to request that HUD review the unsuitability determination. HUD must review any such requests and make a final determination pursuant to 42 U.S.C. 11411(d)(3), implemented in the regulations at 24 CFR 581.4.

After HUD publishes its list of suitable properties that are available for application, an eligible organization may apply to HHS for use of any such property. HHS reviews applications to use suitable properties to assist the homeless under 42 U.S.C. 11411(e). After HHS receives an initial application, HHS has 10 days, unless extended by HHS, to review it and make a determination as to whether the initial application is approvable. HHS must maintain a public record of all actions taken regarding an application under 42 U.S.C. 11411(e)(3). If HHS approves an initial application, the applicant then has 45 days to provide a final application detailing a reasonable plan to finance the approved homeless assistance program under 42 U.S.C. 11411(e)(4). HHS must make a final determination and complete all actions on the final application within 15 days of receipt of a final application pursuant to 42 U.S.C. 11411(e)(5). HHS is then responsible for pursuing the transfer of a suitable property to an approved applicant. In the case of excess or surplus properties, HHS will request assignment of the property from GSA, and if GSA assigns the property to HHS, HHS will enter into a lease or deed with the successful applicant. In the case of unutilized or underutilized property, HHS will process applications for the use of the property, but the individual landholding agency will enter into the lease or permit agreement with the successful applicant. HHS is also the responsible agency for ensuring post-transfer compliance and monitoring activities for those properties transferred by HHS.

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 42 U.S.C. 11411 and the current regulations, the Title V Program is guided by Federal court decisions, including the March 13, 2017, revised Order in *National Law Center on Homelessness and Poverty* v. *Veterans Administration,* et al. 1988 WL 136970 (D.D.C. 1988). Subsequent nationwide litigation, including *Colorado Coalition for the Homeless* v. *GSA and HHS,* 2019 WL 2723857 (D.CO. 2019), *United States* v. *Overcoming Love Ministries,* 2018 WL 4054867 (E.D.N.Y. 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 HHS's regulations. These rulings, taken together with the Agencies' experience operating the Title V program over the past thirty years, have convinced the Agencies that it is now appropriate to amend this joint regulation to achieve the following three goals: harmonize the joint regulation with Title V, as

[1] General Services Administration, Notices of Determination of Homeless Suitability and Availability, Real Property Utilization and Disposal, *https://disposal.gsa.gov/s/noticetypedetail?type=Homeless+Screening.*

amended by FASTA; 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. This Proposed Rule

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

This proposed rule would establish procedures conforming to FASTA, incorporate other legislative changes, and codify established policies and processes that the Agencies use to govern the program. For greater readability, in instances where requirements found in other sections of the proposed rule are referenced by citation, this proposed rule would instead incorporate those provisions in each agency's individual regulations, rather than just the citation, to provide a broader and clearer understanding of the Title V program requirements. This proposed rule would also provide revised suitability criteria for clarity and to address GAO's recommendation in its 2014 report entitled *Federal Real Property: More Useful Information to Providers Could Improve the Homeless Assistance Programs.*[2]

The changes in the proposed rule would amend the Agencies' individual regulations found in Title 24 (HUD), Title 41 (GSA), and Title 45 (HHS) of the Code of Federal Regulations. Provisions of this proposed rule that apply to the Agencies collectively would be found in each agency's regulations. HUD's and GSA's regulations have included all sections applicable to all three Agencies within its regulations found in Title 24 and Title 41, respectively. HHS's regulation will only include provisions directly applicable to HHS.

Throughout this proposed rule, the Agencies have renumbered various existing sections of their respective regulations. This proposed rule references the current section numbers in discussing changes to the applicable sections unless otherwise stated. Also of note, within this proposed regulation, variations of the terms United States and Federal government are intended to be used interchangeably.

1. Definitions

This proposed rule would remove definitions that are no longer relevant, revise other definitions to conform to existing legislation, and incorporate new definitions, some of which are currently used but are not defined in the existing Title V regulation. The updated definitions would modify 24 CFR 581.1, 41 CFR 102–75.1160, and 45 CFR 12a.1 to provide clarity and consistency regarding the Agencies' roles and requirements for potential Title V applicants. The definitions of *Checklist, Classification, Day, GSA, HHS, HUD, Non-profit organization, Representative of the homeless, Suitable property, Underutilized, Unsuitable property,* and *Unutilized property* would remain unchanged.

The definitions of *Applicant, Eligible organization, Excess property, Homeless, Landholding agency, Lease, Permit, Property, Screen* and *Surplus property* would be amended to provide consistent regulatory language across the Agencies. The proposed changes to the definitions of *Applicant, Eligible organization,* and *Surplus property* would be non-substantive but provide more clarity. The definition of *Landholding agency* would be updated to provide more detail regarding the type of agency that typically qualifies as a landholding agency. The definition of *Lease* would be updated to clarify that in the case of underutilized and unutilized real properties, landholding agencies would be the only party from the Federal government to the lease agreement and that landholding agency lease agreements pertain only to underutilized and unutilized real properties. The definition of *Permit* would be amended to specify that permits are typically granted for a maximum of one year and to clarify that a permit does not grant to the recipient any interest in the property.

The definition of *Excess property* would be updated to conform with 40 U.S.C. 102, consistent with the Federal Property Management Reform Act of 2016 and remove the word ''discharge'' from an agency's needs or responsibilities. The definition of *Homeless* would be revised to cross-reference the definition at 42 U.S.C. 11302. The definition of this term was amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (division B, Pub. L. 111–22). The proposed revision is for ease of program administration in the event of a future statutory amendment. The revision is not intended to revise the current interpretation of ''homeless'' for this program or the terms of ''homeless,'' ''homeless individual,'' or ''homeless person'' for other programs not covered by this part. The definition of *Property* would be updated to reference 40 U.S.C. 524, pursuant to the Federal Property Management Reform Act of 2016, which describes executive agencies' property management duties.

The definition of *Screen* would be amended to add the term ''surplus.'' The Agencies are proposing this change to clarify the types of properties subject to the screening processes.

Lastly, the proposed rule would add the following definitions: *HUD website* for clarity, based on FASTA's requirement that HUD publish on the HUD website all reviewed properties determined by HUD to be suitable for use to assist the homeless and that are available for application for use to assist the homeless; *Transferee* to clarify that it means an eligible entity that acquires Federal real property by lease, deed, or permit; *Transfer document* to identify such documents as being lease, deed or permit; *Substantial noncompliance* to clarify that it means the failure to take corrective action as directed by HHS, based on transferees' and potential funders' concerns that HHS will revert a property for a minor issue that was, or could easily be, addressed by corrective action; and *Related personal property* and *State* to conform with 45 CFR 12.1(n) and (p), respectively, as it pertains to this part.

The definitions of *Regional Homeless Coordinator* and *State Homeless Coordinator* would be removed as they are no longer applicable. The definition of *ICH* would also be removed from the definition section, and instead the term ''United States Interagency Council on Homelessness'' would be included within the text of the proposed rule on its first reference.

2. Applicability

The proposed rule would expand the sections of the Agencies' regulations that identify which properties are not subject to the joint regulation by adding properties that are not subject to Federal Real Property Council reporting requirements to this list, in accordance with 40 U.S.C. 623(i). Additionally, 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2, would be updated to reflect that properties not subject to the joint regulation include 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. The proposed rule would also amend 24 CFR 581.2(b)(2), 41 CFR 102–75.1161(b)(2), and 45 CFR 12.a.2(b)(2), to make clear that machinery and equipment that is not related personal property is not subject to the joint regulation, and that machinery and equipment that is related personal property is not subject to the regulation if GSA or the landholding agency

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

choose to dispose of the machinery and equipment separate from the real property. At 24 CFR 581.2(b)(8) and 45 CFR 12a.2(b)(8), the joint regulation already includes Indian Reservation land as property not subject to the joint regulation but does not include the citation to 40 U.S.C. 523. This proposed rule would add the citation to these sections at newly designated paragraph (a)(9) where it currently does not exist. Additionally, the current regulation already provides that properties ''subject to a court order'' are not subject to the regulation, and this proposed rule would specify that this refers only to court orders that, for any reason, preclude transfer for use to assist the homeless under Title V at proposed 24 CFR 581.2(b)(5), 41 CFR 102–75.1161(b)(5), and 45 CFR 12a.2(b)(5). Similarly, the proposed rule would provide clarity regarding the current exclusion of mineral and air space rights from Title V processing by specifying that these exclusions refer to mineral and air space rights that are independent of surface rights. This change would be found in newly designated paragraphs (a)(7) and (8). Lastly, this proposed rule would exclude from Title V processing excess or surplus buildings or fixtures that sit on land owned by a landholding agency where the underlying land is not also excess or surplus. These changes would be found at proposed paragraph (b)(12) of 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2.

3. Collecting Information From Federal Agencies

The McKinney-Vento Act requires HUD to canvass landholding agencies quarterly and requires the landholding agencies to respond with property information within 25 days. HUD is then required to make a suitability determination on the property within 30 days of receipt of the property information. Because of the high number of properties being reported to HUD, HUD began accepting property information from landholding agencies on an ongoing basis. This proposed rule would codify this existing process at 24 CFR 581.3(a) and 41 CFR 102–75.1162(a). It also would provide that HUD's canvass of landholding agencies will 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. It would clarify that landholding agencies will respond to HUD's information collecting canvass in accordance with 40 U.S.C. 524. This proposed rule would clarify in 24 CFR 581.3(a) and 41 CFR 102–75.1162(a) that a completed property checklist is the vehicle for submitting property information to HUD. Consistent with FASTA, paragraphs (d) of 24 CFR 581.3 and 41 CFR 102–75.1162 would provide that HUD will review properties with a change in status for suitability and repost the property information on the HUD website.

4. Suitability Determination

HUD has 30 days from the time it receives property information from landholding agencies or GSA to make a suitability determination. Currently, property that is determined unsuitable may not be made available for any other purpose for 20 days after publication under 24 CFR 581.4(e) and 41 CFR 102–75.1175(e). To request a review of a property determined unsuitable for homeless assistance use, a representative of the homeless must contact HUD within 20 days of the publication of notice that a property is unsuitable pursuant to 24 CFR 581.4(f)(1) and 41 CFR 102–75.1175(f)(1). Under 24 CFR 581.4(f)(4) and 41 CFR 102–75.1175(f)(1) of the current regulation, HUD is required to notify the landholding agency of the request to review the unsuitability determination and advise the landholding agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. Regulations found at 24 CFR 581.4(f)(4)(i) and 41 CFR 102–75.1175(f)(4)(i) currently provide that HUD will act on all review requests within 30 days after receiving the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision. There is currently no deadline, however, for the landholding agency to respond to HUD's request for additional information. The current regulation also does not outline the determination process after HUD receives or does not receive the landholding agency's response. As a result, the Agencies are proposing in 24 CFR 581.4(f)(4) and 41 CFR 102–75.1163(f)(4) of this proposed rule 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, HUD would proceed with the appeal review with the property information provided in the survey it already has and information submitted in the appeal request provided by the representative of the homeless. This proposed rule would add at proposed paragraph (f)(4)(i) of 24 CFR 581.4 and 41 CFR 102–75.1163 that HUD will act on requests for review where the landholding agency or GSA has failed to meet the deadline within 30 days of such deadline.

This rule would also propose to incorporate required statutory changes under FASTA in proposed sections 24 CFR 581.4(e), (f)(1), and (f)(4)(ii) and 41 CFR 102–75.1163(e), (f)(1), and (f)(4)(ii) that allow HUD to post suitability determinations on a HUD website or a successor technology that is equally accessible and available to the public. This proposed rule would update processes by removing the identified toll-free number from 24 CFR 581.8(b) and revising 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. Persons with inquiries regarding property suitability and other Title V related questions will be instructed to submit questions through the HUD Title V website, or such other method as HUD may require in proposed 24 CFR 581.4(f)(1) and 41 CFR 102–75.1163(f)(1). 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

Currently under 24 CFR 581.5 and 41 CFR 102–75.1180, landholding agencies are 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 would remain substantially the same but would be updated for clarity. Within Title 41, this proposed rule would contain this section at the redesignated 41 CFR 102–75.1164.

6. Suitability Criteria

This proposed rule would revise the criteria in 24 CFR 581.6 and 41 CFR 102–75.1185 that HUD uses to determine suitability to make the criteria clearer and more user-friendly for both the Agencies and applicants. The Agencies propose to reframe this section by dividing the suitability criteria into two categories: (1) properties deemed suitable unless the properties have any of the characteristics listed in paragraph (a),

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 proposed paragraph (b).

In proposed paragraph (a)(1), the proposed rule would 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 by the landholding agency or GSA, that the property complies with the acceptable separation distance standards at 24 CFR part 51, subpart C and the HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities'' or a successor guidebook, or that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place. The proposed rule would 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. Instead, the proposed rule would utilize the more useful acceptable separation distance standards and would exclude containers and facilities that are not hazards, as defined in 24 CFR 51.201. Additionally, in proposed paragraph (a)(2), the proposed rule would add coastal barriers as a suitability criterion; properties located in a Coastal Barrier System Unit would be determined unsuitable because most new federal expenditures and financial assistance, including federal flood insurance, are prohibited within Coastal Barrier System Units.[3] A Coastal Barrier System Unit is any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers, included within the Coastal Barrier Resources System established by the Coastal Barriers Resources Act, as amended (codified at 16 U.S.C. 3501).

This proposed rule would also rename the documented deficiencies criterion currently at 24 CFR 581.6(a)(5) and 41 CFR 102–75.1185(a)(5) as ''Site Safety Conditions'' in newly redesignated paragraph (a)(3) and focus that criterion solely on a property's physical characteristics, including, as examples, properties that exhibit significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

The proposed rule would move the criteria regarding floodways, national security concerns, runway clear zones, and inaccessible property into paragraph (b), as property presumed unsuitable unless information to enable HUD to determine it suitable is provided. The proposed rule would also remove the reference in the current rule to floodways that have been ''contained or corrected'', since the meaning of ''corrected'' is 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 proposed rule also includes specific questions for public comment in section III regarding suitability criteria. The Agencies considered several changes to this section and do not expect these proposed changes to affect the number of properties deemed suitable.

7. General Policies of HHS

The proposed rule would add a section General Policies of HHS to mirror 45 CFR part 12.3 instead of incorporating that regulation. The section highlights the minimum criteria for eligibility for and transfers of surplus property.

8. Expressions of Interest Process

HHS is responsible for accepting expressions of interest for properties published by HUD as suitable and available for homeless assistance purposes. Pursuant to FASTA, the period in which eligible organizations must submit an expression of interest has changed from 60 days to 30 days from the date of HUD's publication. Therefore, eligible organizations must now submit an expression of interest to HHS within 30 days of HUD's publication date. This proposed change would be found at 24 CFR 581.10, 41 CFR 102–75.1169, and 45 CFR 12a.4. In an effort to increase efficiency and be environmentally conscious, HHS will accept such expressions of interest by email at *rpb@psc.hhs.gov.* This change is located at paragraph (c) of those sections. HHS's physical address would also be updated to its current physical address in the revised regulation. Additionally, at paragraph (b), this section would be amended 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

HHS is responsible for receiving and evaluating applications submitted by eligible organizations for properties deemed suitable and available. Prior to FASTA, eligible organizations were required to submit a single application within 90 days after HHS's receipt of an acceptable expression of interest. Under FASTA, the process now requires that an eligible organization submit an initial application within 75 days following HHS's receipt of an expression of interest, unless extended by HHS. 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. This proposed rule would incorporate the two-stage application process outlined in FASTA and which HHS currently follows.

The proposed rule would revise the regulation to make the application requirements more clear, concise, and consistent with the instructions accompanying the application packet. This proposed rule would expand the existing regulations found at 24 CFR 581.9, 41 CFR 102–75.1200 and 45 CFR 12a.9 to describe the specific document an applicant must submit with its application to demonstrate its ability to hold title to property for the requested purpose(s). This proposed rule would also modify the current regulations found at 24 CFR 581.9(b)(2), 41 CFR 102–75.1200(b)(2) and 45 CFR 12a.5(b)(2) to require 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, including local zoning regulations. The modification is meant to ensure an applicant's proposed program is capable of being developed and operated following transfer without hindrances posed by local codes, regulations and/or similar limitations. These updates would also incorporate existing practice that applicants requesting lesser portions of the listed real property will be denied. These updated provisions would be found at the newly redesignated paragraphs (a)(1) and (a)(2) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would also expand current 24 CFR 581.9(b)(3), 41 CFR 102–75.1200(b)(3) and 45 CFR 12a.9(b)(3) to advise applicants that the description of the proposed program must also include how the applicant intends to implement the proposed

[3] *See* U.S. Fish and Wildlife Service, Glossary, Coastal Barrier Resources System, *https://www.fws.gov/ecological-services/about/glossary.html#CBRA.*

program. Such information is crucial to HHS in rendering a determination on the adequacy and timeliness of a proposed program and likelihood of operational success, and often applications only contain a list of proposed services without any description about the programs or implementation. The proposed rule would capture these changes at the newly redesignated paragraphs (a)(3) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would also modify 24 CFR 581.9(b)(4) and 581.9(b)(5), 41 CFR 102–75.1200(b)(4) and 102–75.1200(b)(5) and 45 CFR 12a.9(b)(4) and 12a.9(b)(5) for greater clarity regarding the application process. These updated paragraphs would be found at newly redesignated paragraphs (a)(4) and (a)(5) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5. Regarding paragraph (a)(4), an applicant would be required to 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. Additionally, this paragraph would be expanded to clarify that an applicant is required, per the application instructions, to provide details concerning modifications to the property that need to be completed before the program can become operational.

This proposed rule would also clarify 24 CFR 581.9(b)(4), 41 CFR 102–75.1200(b)(4) and 45 CFR 12a.9(b)(4), the requirements needed to demonstrate an applicant's ability to finance and operate the proposed program. Finances typically prove to be the most difficult for transferees to navigate to ensure that monies are available to successfully operate the program and adequately maintain the property during the duration of the transfer term. Formulating a reasonable financial plan during the application process ensures that an applicant has the methods and means to carry out the application proposal. The requisite information provides HHS more confidence in making a determination on an application and is designed to both spare applicants the time and expense associated with a transfer that is likely to fail and protect the United States' residual interest in the transferred property. Therefore, rather than requiring that an applicant merely ''indicate'' it has financial ability, this proposed rule would revise this section to incorporate HHS's current practice of requiring that an applicant ''demonstrate'' its financial ability. A reasonable financial plan must, at a minimum, be specific and be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed; and neither diminish the value of the government's interest in the property nor impair the government's ability to revert and immediately dispose of the property with clear title, free of any lien or encumbrance. Further, this section would memorialize current practice, which 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. This enables the approved applicant to gain site control of the property that may be required for funding and additional time to provide HHS the requisite information to ensure the Federal government's interest in the property is adequately protected. These proposed changes would be found at newly redesignated paragraph (a)(6) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

This proposed rule would modify 24 CFR 581.9(b)(6), 41 CFR 102–75.1200(b)(6) and 45 CFR 12a.9(b)(6) to clearly state property insurance requirements and the purpose thereof, thereby allowing for the omission of the reference to other provisions of the Agencies' regulations. This proposed rule would amend 24 CFR 581.9(b)(9), 41 CFR 102–75.1200(b)(9) and 45 CFR 12a.4(b)(9) pertaining to local government notification of the applicant's application for acquisition of surplus property for the proposed purpose. The section would be amended to incorporate HHS's current practice of requiring that an applicant notify the local government in writing and provide evidence of such rather than simply indicate in its application that it has done so. These changes would be codified at newly redesignated paragraphs (a)(9) and (a)(12), respectively, of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5.

The proposed rule would revise and expand 24 CFR 581.9, 41 CFR 102–75.1200, and 45 CFR 12a.9 to clarify the requirements regarding the transfer of surplus property and to comply with FASTA. Pursuant to FASTA, an applicant has the discretion to apply for Federal real property for a permit, lease, or deed. An applicant applying for a deed must comply with local zoning and certify such in its application by providing the required documentation. This proposed rule would incorporate HHS's current policy that transfers by deed will only be made subsequent to 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.

This proposed rule would also revise 24 CFR 581.9(c), 581.9(d), and 581.9(e), 41 CFR 102–75.1200(c), 102–75.1200(d), and 102–75.1200(e), and 45 CFR 12a.9(c), 12a.9(d), and 12a.9(e) to conform to legislative changes required by FASTA. Under FASTA, an initial application is now due 75 days following HHS's receipt of an expression of interest. This differs from the current regulation requiring the application, in its entirety, be submitted within 90 days of an applicant's expression of interest. This proposed rule would revise paragraph (c) of the previously referenced sections to set forth the new deadline for submitting an initial application. Additionally, FASTA reduced the time for HHS to review an initial application from 25 days to 10 days of its receipt. This proposed rule would reflect this change and revise paragraph (d) of the above referenced sections within the Agencies' individual regulations. It would also revise the ranking system and criteria contained in this section. An initial application would be evaluated based on the three statutory criteria: services offered; need; and experience. Criteria would no longer be evaluated with ranking weights; rather, all criteria would be of equal weight, and failure to meet any one criterion would result in the application being disapproved. Additionally, each paragraph within this section would be revised to conform to legislative changes pursuant to FASTA and to eliminate any confusion caused by the March 13, 2017, revised Order *in National Law Center on Homelessness and Poverty* v. *Department of Veterans Affairs,* (D.D.C. 1988).[4] If HHS approves an initial application, an applicant is provided 45 days to submit a final application,

[4] The revised court order provides, in pertinent part: ''No later than 15 days after the receipt of the final application, HHS shall review, make a final determination, and complete all actions on the final application. This period may be extended by agreement of HHS and the applicant.'' The language ostensibly provides HHS with the discretion to extend the statutory deadline for the final application. Consistent with HHS practice since FASTA was implemented and judicial decisions such as *Colorado Coalition for the Homeless* v. *GSA and HHS,* 2019 WL 2723857 (D.CO. 2019) and *New Life Evangelistic Center, Inc.* v. *Sebelius,* 753 F.Supp.2d 103 (D.D.C. 2010), HHS will require all final applications to be completely submitted within the statutory deadline and will not exercise the discretion the Court's order in National Law Center purports to give to HHS.

setting forth a reasonable financial plan. HHS will not extend the deadline to submit a final application, or any part thereof, as the statute does not contain an extension provision or otherwise allow the deadline to be extended. HHS will provide a determination within 15 days of receiving the final application.

10. Surplus Property Transfer Documents

This proposed rule would add an entirely new section regarding transfer documents to conform to legislative changes made pursuant to FASTA. Applicants are permitted to apply for surplus property for acquisition by lease, deed, or permit. For clarifying purposes, the proposed rule would add this section to include relevant provisions of 41 CFR part 102–75 and 45 CFR part 12 pertaining to general terms and conditions of transfers. This proposed change improves the readability of the regulation and removes the need for additional cross-references. Additionally, the proposed rule omits the provision that requires the reversion or abrogation of transferred property, at the discretion of HHS, should the property not be placed into use within 8 years. This change allows more flexibility to resolve such issues on a case-by-case basis and, based on conversations with transferees, provides more assurances to funders that property may not be automatically reverted should the property not be placed into use within 8 years. These proposed changes would be captured at newly redesignated 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7.

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

At 24 CFR 581.9(b)(8), 41 CFR 102–75.1200(b)(8), and 45 CFR 12a.9(b)(8), the current regulation already provides general application requirements as they pertain to environmental information. The proposed rule would expand these sections to clarify and to mirror requirements and policies currently required by NEPA and other related Acts. This proposed rule would contain this expanded clarification at 24 CFR 581.16, 41 CFR 102–75.1174, and 45 CFR 12a.8.

12. No Applications Approved

This proposed rule would modify 24 CFR 581.12, 41 CFR 102–75.1215, and 45 CFR 12a.12 to comply with FASTA. Under FASTA, Federal real properties shall 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 proposed rule would codify these changes in the newly redesignated 24 CFR 581.17, 41 CFR 102–75.1175, and 45 CFR 12a.9.

13. Utilization and Enforcement

This proposed rule would add 24 CFR 581.18, 41 CFR 102–75.1176, and 45 CFR 12a.10 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 have not changed but are included in the regulation to clarify program requirements to applicants and transferees. This section also includes the Federal government's requirements of transferees in the event of a reversion action. Such reversionary language is currently included in transfer documents.

14. Other Uses

The proposed rule would add 24 CFR 581.19, 41 CFR 102–75.1177, and 45 CFR 12a.11 to incorporate HHS's current policy as it relates to ''other uses'' of surplus property by transferees. The proposed rule would make clear 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. In adding this section, the Agencies address questions and requests made by transferees since inception of the program.

15. Abrogation

The abrogation process is discussed in various sections of the current regulation, and this proposed rule would establish 24 CFR 581.20, 41 CFR 102–75.1178, and revise 45 CFR 12a.12 to more clearly articulate the instances in which HHS may abrogate the conditions and restrictions in the transfer document. This proposed rule would address the abrogation process in its own section for clarity and simplicity.

16. Compliance Inspections and Reports

For clarifying purposes, the proposed rule would add this section to include provisions of 45 CFR part 12.14 pertaining to compliance inspections and reports. HHS's policies have not changed but are included in the regulation to be clearer for the public and removes the need for additional cross-references. These policies would be captured at 24 CFR 581.21, 41 CFR 102–75.1179, and 45 CFR 12a.13.

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 proposed rule would establish 24 CFR 581.22 and 41 CFR 102–75.1180, and modify 45 CFR 12a.14 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

This proposed rule would make changes throughout HUD's and GSA's existing 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'' would be added to 24 CFR 581.8(a) and 41 CFR 102–75.1167(a) and in place of ''Federal Register'' as necessary, throughout HUD's and GSA's regulations. In addition, the proposed rule would revise 24 CFR 581.8(b) and 41 CFR 102–75.1167(b) 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 clarifies 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 would be added to 24 CFR 581.3(b) and 41 CFR 102–75.1162(b), and the proposed rule would clarify 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 pursuant to 24 CFR 581.3(b) and

41 CFR 102–75.1162(b). To reflect the transition to publishing electronically, the proposed rule also removes 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 would be made throughout the regulations for clarity, including at proposed sections 24 CFR 581.8 and 581.12, 45 CFR 12a.6, and 41 CFR 102–75.1167 and 102–75.1171.

B. Changes to HUD's Regulations

The proposed changes to regulations found at 24 CFR part 581 relate to each agency's responsibilities under the McKinney-Vento Act in an effort to provide the public with a comprehensive understanding of the Title V process. Part 581 would continue to contain HUD's responsibilities under Title V while also publishing all changes discussed above, including new sections explained above in 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 102–75 (subpart H) would 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 will be published jointly with HUD and HHS, subpart H would be updated to include all changes discussed above, including new sections explained above in II.A.10, II.A.11, and II.A.13 through II.A.16. This proposed rule would also 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, sections in subpart H would be renumbered throughout the regulation as noted above.

D. Changes to HHS's Regulations

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

III. Questions for Public Comment

HUD and GSA seek public comment on the suitability criteria in 24 CFR 581.6 and 41 CFR 102–75.1165 and on the proposal to exclude property from the screening process if it is only available for removal for off-site use. For each of the questions asked below, and regarding any other issue, the Agencies are interested in public comment on whether and how the Agencies should refine the suitability criteria such that HUD can determine properties suitable under the statute notwithstanding certain conditions that will not be remedied by landholding agencies before property is transferred by long-term lease or deed. Specifically, the Agencies seek comment on how suitability criteria can protect the public from conditions that represent a clear threat to personal physical safety and health if left unremedied, while not inappropriately identifying properties as unsuitable due to low-risk conditions that HUD determines can easily be remedied by a transferee. Additionally, HHS seeks public comment regarding potential barriers to the development of a plan to finance under the modified application process in this proposed rule. While the following questions are not exhaustive, the Agencies are particularly interested in comments on the following questions:

Question 1. Are there cases or scenarios in which the Agencies should consider revising the proposed suitability criteria at 24 CFR 581.6(a)(1) and 41 CFR 102–75.1165 to allow HUD to determine that a property is suitable in its current condition if acceptable separation distance standards, including mitigating measures defined in 24 CFR 51.205, are not in place, but the risks associated with the presence of flammable or explosive materials are extremely low or would be mitigated through the transferee's routine compliance with applicable Federal, state, or local law? If so, what changes should HUD consider to the proposed rule? In its review of comments, the Agencies will not consider changes that would require an agency to impose, monitor, or enforce mitigating actions by transferees.

Question 2. If an incidental portion of a property is in a floodway or runway clear zone should the entire property be determined unsuitable?

Question 3: Should there be other changes to the suitability criteria?

Question 4: The Agencies are also considering amending the regulations' applicability to exclude property only available for removal for off-site use from the screening process. How would interested members of the public view this change?

Question 5: Given the requirements and limitations in the revised statute, what if any, barriers would you foresee to the development of a plan to finance under the modified application process as outlined in this proposed rule and how, specifically, could HHS act within its authority to address those barriers?

IV. Findings and Certifications

HUD

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), 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. This proposed rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the 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. This rule streamlines the process for Federal surplus transfers pursuant to the Federal Assets and Sales Act of 2016.

This proposed rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). The Agencies prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule and is part of the docket file for this rule.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the

FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is 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.*

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 proposed 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 proposed rule imposes no additional requirements on small entities. The rule conforms the Agencies' existing regulation with required statutory changes under the Federal Assets Sale and Transfer Act of 2016 and other legislative changes. This proposed rule also provides for HUD's suitability determinations to be published electronically rather than in the **Federal Register**. Accordingly, the undersigned certifies that this proposed 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 proposed 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.

GSA

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not anticipated to be a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). 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, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register.** OIRA has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act

GSA certifies this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule applies only to Federal agencies and employees.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

HHS

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), 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 order. This rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the 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. This rule streamlines the process for Federal surplus property transfers pursuant to the Federal Assets and Sales Act of 2016.

Environmental Review

National Environmental Policy Act of 1969 (NEPA). Actions resulting from this proposed rule amendment may constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not specifically required for purposes of the proposed rule amendment, however, actions involving specific property transactions may require further NEPA analysis 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.

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 proposed 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 proposed rule imposes no significant economic impacts or additional requirements on a substantial number of small entities as defined by 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. Accordingly, the undersigned certifies that this proposed 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

Under the Paperwork Reduction Act, all Departments are required to submit to the Office of Management and Budget for review and approval or any reporting or recordkeeping requirements in a proposed or final rule. This proposed rule amendment does contain information collection requirements which have been approved by the Office of Management and Budget under control number 0937–0191.

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

Government Property, Surplus Government Property, Grant programs—health, Grant programs—housing and community development, Homeless, Housing, Public Assistance Programs.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

Accordingly, for the reasons stated above, HUD proposes to amend 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 by:
■ a. Revising the definitions of *Applicant, Eligible organization, Excess property,* and *Homeless;*
■ b. Adding the definition of *HUD website;*
■ c. Removing the definition of *ICH;*
■ d. Revising the definitions of *Landholding agency, Lease, Non-profit organization, Permit, Property;*
■ e. Removing the definition of *Regional homeless coordinator;*
■ f. Adding the definition of *Related personal property;*
■ g. Revising the definition of *Screen;*
■ h. Adding the definition of *State;*
■ i. Removing the definition of *State homeless coordinator;*
■ j. Adding the definition of *Substantial noncompliance;*
■ k. Revising the definitions of *Suitable property* and *Surplus property;*
■ l. Adding the definitions of *Transfer document* and *Transferee.*

The revisions and additions read as follows:

§ 581.1 Definitions.

Applicant means any eligible organization which 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 by its charter or by State law to 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.

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.

Substantial noncompliance means failure to take corrective action as directed by HHS.

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 to read as follows:

§ 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, 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 owned by 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.

■ 4. In § 581.3 revise paragraphs (a), (b), and (d) to read as follows:

§ 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 below, 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.

* * * * *

(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.

■ 5. In § 581.4 revise paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 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.

* * * * *

(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 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.

■ 6. Amend § 581.5 by:

■ a. Revising paragraphs (b), (c), (e), (f), (g), and (h); and

■ b. Adding paragraph (i).

The revisions and additions read as follows:

§ 581.5 Real property reported excess to GSA.

(a) * * *

(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 above, 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.

* * * * *

(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 current regulations. (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.

■ 7. Revise § 581.6 to read as follows:

§ 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 below, 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.

■ 8. Revise § 581.7 to read as follows:

§ 581.7 Determination of availability for suitable properties.

(a) 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:

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

(i) An intention to declare the property excess;

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

(iii) 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.

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

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

(ii) 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.

(b) [Reserved]

■ 9. Revise § 581.8 to read as follows:

§ 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.

■ 10. Revise § 581.9 to read as follows:

§ 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) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) 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.

(e) 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.

■ 11. Revise § 581.10 to read as follows:

§ 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 of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to 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 useable 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) 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.

(1) 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.

■ 12. Revise § 581.11 to read as follows:

§ 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.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an ''eligible organization'' as specified in § 581.1. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(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 the ability to 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 government's interest in the property nor impair the 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 United States' 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; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; 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; Section 1557 of the Affordable Care Act and implementing regulations; 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; 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; and Titles II or III of the Americans with Disabilities Act and implementing regulations, 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. 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 above email address 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, 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 § 581.11(a)(7), 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.

■ 13. Revise § 581.12 to read as follows:

§ 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. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(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.

■ 14. Add § 581.14 to read as follows:

§ 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 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 an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, 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 36 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, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the 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 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. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(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 substantial 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 substantial 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 substantial 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 paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) 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 foregoing terms and conditions 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 paragraph (f) of this section, 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) Completion of Transfer Term and Reversion of Title. 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 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.

■ 15. Add § 581.15 to read as follows:

§ 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 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.

■ 16. Add § 581.16 to read as follows:

§ 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 above cited Acts.

(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 above cited Acts. 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.

■ 17. Add § 581.17 to read as follows:

§ 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.

■ 18. Add § 581.18 to read as follows:

§ 581.18 Utilization and Enforcement.

(a) *Sanctions.* For instances of substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, 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 substantial 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, HHS will work with GSA 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.

■ 19. Add § 581.19 to read as follows:

§ 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; and

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

(b) [Reserved].

■ 20. Add § 581.20 to read as follows:

§ 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.

■ 21. Add § 581.21 to read as follows:

§ 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.

■ 22. Add § 581.22 to read as follows:

§ 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.

General Services Administration

Accordingly, for the reasons stated above, GSA proposes to amend 41 CFR part 102–75 subpart H as follows:

PART 102–75—REAL PROPERTY DISPOSAL

■ 23. The authority citation for 41 CFR part 102–75 subpart H 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.

■ 24. Revise part 102–75 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?

Applicability

102–75.1161 What is the applicability of this subpart?

Collecting the Information

102–75.1162 How will information be collected?

Definitions

§ 102–75.1160 What definitions apply to this subpart?

The following definitions are also pursuant to 24 CFR part 581.1 and 45 CFR part 12a.1.

Applicant means any eligible organization which 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 by its charter or by State law to enter into an agreement with the Federal government for use of property for the purposes of this subpart. 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.

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.

Substantial noncompliance means failure to take corrective action as directed by HHS.

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, 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 owned by 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 below, 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 § 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 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 above, 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 current regulations. (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.

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 below, 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?

(a) 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:

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

(i) An intention to declare the property excess;

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

(iii) 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.

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

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

(ii) 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.

(b) [Reserved]

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 regarding the transfer of properties to assist the homeless?

(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) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) 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.

(e) 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.

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 of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to 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 useable 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) 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.

(1) 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.

(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. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(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 the ability to 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 government's interest in the property nor impair the 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 United States' 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; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; 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; Section 1557 of the Affordable Care Act and implementing regulations; 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; and the prohibitions against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. 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. 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 above email address 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, 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 § 102–75.1170(a)(6), 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. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(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 Federal real 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 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 an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, 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 36 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, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the 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 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. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(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 substantial 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 substantial 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 substantial 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 paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) 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 foregoing terms and conditions 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 paragraph (f) of this section, 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) Completion of Transfer Term and Reversion of Title. 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 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 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 above cited Acts.

(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 above cited Acts. 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 substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, 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 substantial 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, HHS will work with GSA 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; and

(b) [Reserved].

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.

§§ 102–75.1182 through 102–75.1219 [Reserved]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

■ 25. The authority citation for part 12a is revised to read as follows:

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

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

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

Sec.

§ 12a.1 Definitions.

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

(b) *Classification* means a property's designation as unutilized, underutilized, excess, or surplus.

(c) *Day* means one calendar day, including weekends and holidays.

(d) *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 by its charter or by State law to 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.

(e) *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.

(f) *GSA* means the General Services Administration.

(g) *HHS* means the Department of Health and Human Services.

(h) *Homeless* is defined in 42 U.S.C. 11302. This term is synonymous with ''Homeless Individual'' and ''Homeless Person.''

(i) *HUD* means the Department of Housing and Urban Development.

(j) *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.

(k) *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.

(l) *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.

(m) *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.

(n) *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.

(o) *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.

(p) *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.

(q) *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.

(r) *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.

(s) *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.

(t) *Substantial noncompliance* means failure to take corrective action as directed by HHS.

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

(v) *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.

(w) *Transfer document* means a lease, deed, or permit transferring surplus, unutilized or underutilized property.

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

(y) *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.

(z) *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 Public Law 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, 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 owned by 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) Eligible organizations must be authorized, in the State in which the requested property is located, to carry out the activity for which it requests the property.

(d) 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.

(e) 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.

§ 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 of publication. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send to 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 useable 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) 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.

(1) 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.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an ''eligible organization'' as specified in § 12a.1. The applicant must document its authority to hold property for the proposed program and plan of use by providing a copy of its Articles of Organization, Charter, Certification from State of Non-Profit Organization status, or other appropriate document or citation. Private, non-profit organizations applying for the acquisition of a certain property must document that they are tax exempt under section 501(c)(3) of the Internal Revenue Code.

(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 the ability to 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 government's interest in the property nor impair the 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 United States' 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; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; 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; Section 1557 of the Affordable Care Act and implementing regulations; 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; and the prohibitions against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. 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. 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 above email address 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, 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 § 12a.5(a)(7), 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. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(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 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 an approved program and plan of use, in accordance with 42 U.S.C. 11411 and these regulations, 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 36 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, sell, lease or sublease, rent, mortgage, or otherwise dispose of the property, or any part thereof, without the prior written authorization of HHS. In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in an approved plan without the 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 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. Where loss or damage to the transferred property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed. Further, transferee shall neither take any action nor allow any action which diminishes the residual financial interest of the United States.

(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 substantial 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 substantial 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 substantial 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 paragraph (f) of this section, apply for a period of thirty (30) years of use in accordance with a program of use approved in writing by HHS. The thirty-year (30) 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 foregoing terms and conditions 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 paragraph (f) of this section, 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) Completion of Transfer Term and Reversion of Title. 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 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 above cited Acts.

(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 above cited Acts. 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 substantial noncompliance relating to surplus property transfers, HHS may impose, in its sole discretion, any or all of the following sanctions, 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 substantial 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, HHS will work with GSA 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 transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 12a.1(d) for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(a) 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;

(b) 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;

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

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

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

§ 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.

Marcia L. Fudge,

Secretary, HUD.

Robin Carnahan,

Administrator, GSA.

Xavier Becerra,

Secretary, HHS.

[FR Doc. 2023–04353 Filed 3–17–23; 8:45 am]

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