

## SUBCHAPTER L—SPECIAL REGULATIONS

### PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

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#### Subpart A—General Policy, Purpose and Definitions

##### § 777.11 General policy.

It is the policy of the Postal Service to comply voluntarily with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), hereinafter referred to as the Act.

##### § 777.12 Purpose.

The purpose of these regulations is to update policy and procedures for the Postal Service's voluntary compliance with the Act.

##### § 777.13 Definitions.

(a) *The Act*. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894).

(b) *Business*. Any lawful activity, except a farm operation, that is:

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

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

(3) Solely for the purposes of reimbursing moving and related expenses, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

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

(c) *Small business*. A business having at least one but not more than 500 employees working at the location being acquired.

(d) *Comparable Replacement Dwelling*. A dwelling which is:

(1) Decent, safe, and sanitary.

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonably adverse environmental conditions, is not generally less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the displaced person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not

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include special improvements such as outbuildings, fences, swimming pools, and greenhouses.

(5) Currently available to the displaced person.

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

(e) *Decent, Safe, and Sanitary Dwelling.* A dwelling which meets local housing and occupancy codes and the following standards, unless they are waived for good cause by the Postal Service. The dwelling must:

(1) Be structurally sound, weather-tight, and in good repair.

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

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

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

(5) Contain unobstructed egress to safe, open space at ground level.

(6) For displaced persons who are handicapped, be free of any barriers which would preclude their reasonable ingress, egress, or use of the dwelling.

(f) *Displaced Person.* (1) Subject to the additional definitions, limitations and exceptions in paragraph (f)(2) of this section, the term “displaced person” is defined as follows. (“Displaced persons” are entitled to receive benefits only as specifically provided for elsewhere in these regulations.)

(i) A person who owns real property, and who is required to move or to move personal property from the real prop-

erty following Postal Service action to obtain title to, or a leasehold interest in, such real property by the exercise or the threat of the exercise of eminent domain.

(ii) A person who is a tenant and who is required to move or to move his or her personal property from real property:

(A) Following Postal Service action to obtain the tenant's leasehold interest in such real property by the exercise or the threat of the exercise of eminent domain, or,

(B) Where the Postal Service acquires a fee interest in the property (including long-term leases of 50 years or more), as a result of a Postal Service notice of displacement or notice to vacate such real property, provided the tenant was lawfully in possession on the date title to such property transfers to the Postal Service. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(C) Where such real property was used to construct a new building for the express purpose of leasing to the Postal Service under circumstances where such tenant would have been a “displaced person” hereunder had the Postal Service itself acquired the land and required the removal of the tenant to undertake construction of the building for Postal Service ownership.

(iii) Where the Postal Service acquires either a fee interest or a leasehold interest in the property, a person who is a residential tenant and is or will be required to move or to move his or her property from the real property, in order for the Postal Service to accomplish the project for which the property was acquired, provided such tenant occupies such real property on the date title in such real property transfers to the Postal Service or the date the Postal Service leases or contracts to lease such property, and further provided such tenant was lawfully in possession at the time of the initiation of negotiations. (The requirement that the tenant occupy such real property on the date title in such real

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property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(2) The term "displaced person" covers only persons meeting the requirements in paragraph (f)(1) of this section. The term "displaced person" does not cover the following non-exclusive list of examples.

(i) An owner who voluntarily sells his or her real property to the Postal Service, or,

(ii) A tenant who voluntarily transfers his or her leasehold interest to the Postal Service without the exercise or the threat of the exercise of eminent domain, or,

(iii) A tenant who is not lawfully in possession at the times for which lawful possession is specified in paragraphs (f)(1)(ii)(B) and (f)(1)(iii) of this section. A tenant who was legally required by the lease or otherwise to have moved from the property at the times specified in such paragraphs shall not be considered to be lawfully in possession.

(iv) A person who, at the determination of the Postal Service, is not required to relocate permanently, or,

(v) A person who, after receiving a notice of displacement or notice to vacate by the Postal Service, is notified in writing that he or she will not be displaced. Such later notification shall not be issued if the person has already moved. If such latter notification is issued, the Postal Service shall reimburse the person for any reasonable expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement or the notice to vacate or,

(vi) A person who is required to temporarily vacate the premises in order to permit fumigation, repair, painting, or other maintenance or code of enforcement work or,

(vii) A tenant who is required to move from real property as a result of a notice from the Postal Service to vacate such real property where such notice to vacate is issued five years or more after the date of the acquisition of such real property. A tenant who is given a notice to vacate as a result of failure to comply with the terms of his/her lease with the Postal Service or failure to renew his/her lease under

prevailing market conditions is not considered to be a displaced person.

(viii) A mobile home occupant who owns the site on which the mobile home is located and who voluntarily sells the site to the Postal Service, regardless of whether such person owns or rents the mobile home.

(ix) A person whose property is acquired through a "friendly condemnation action" where price is not an issue.

(g) *Displacement Dwelling.* The dwelling acquired by the Postal Service from which a displaced person is required to move.

(h) *Dwelling.* The place of permanent or customary and usual residence of a person including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-house-keeping unit (*i.e.*, room in a boarding house); a mobile home; or any other residential unit.

(i) *Family.* Two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. If the Postal Service considers that circumstances warrant, others who live together as a family unit may be treated as if they are a family for the purpose of determining assistance under these regulations.

(j) *Farm Operation.* Any activity conducted solely or primarily for the production of one or more types of agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(k) *Financial Means.* A comparable replacement dwelling is within the financial means of the displaced family or individual if the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay does not exceed the greater of 25 percent of the monthly gross income of the displaced family or individual or the ratio of the present monthly rental or housing cost to the

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gross income of the displaced family or individual. (Supplemental payments made by public agencies are to be included in gross income for purposes of these comparisons.)

(l) *Initiation of Negotiations.* In the case where eminent domain is neither exercised nor threatened to be exercised, the initiation of negotiations is the initial written communication stating a price by the owner or the owner's representative to the Postal Service, or by the Postal Service to the owner or the owner's representative, regarding a proposed acquisition (by purchase or lease) or an interest in a specific piece of real property. In the case where eminent domain is either exercised or threatened to be exercised, the initiation of negotiations is the date the Postal Service makes a written offer of just compensation.

(m) *Notice of Displacement.* A notice given in writing by the Postal Service to a person that he or she will be displaced from his or her place of residence, business or farm, as a result of a facility action by the Postal Service. A notice of displacement may be combined with or in a notice to vacate.

(n) *Notice to Vacate.* A notice given in writing by the Postal Service to a person that he or she is to vacate postal owned property on or before a certain date. A notice to vacate may be combined with or in a notice of displacement.

(o) *Owner of Displacement Dwelling.* A person is considered to be an owner, if, at the initiation of negotiations, the person holds any of the following interests in real property acquired for a postal project:

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

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

(3) A contract to purchase any of the interests or estates described in paragraph (o)(1) or (o)(2) of this section; or

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

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(p) *Person.* Any individual, family, partnership, corporation, association, business or farm operation.

(q) *Personal Property.* Any tangible property, not considered part of the real property, for which payment has not been included in the acquisition cost.

(r) *Tenant.* A person who has the legal right to temporary use and occupancy of real property owned by another. In some cases, these regulations also use the term "tenant" to refer to a person who occupies real property owned by another but whose legal right was terminated due to a timely notice to vacate the real property used and occupied.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10666, Mar. 15, 1989]

### § 777.14 Certain indirect actions prohibited.

Postal employees shall take no indirect, coercive, or deceptive actions to cause persons to move from real property in an effort to avoid the circumstances under which such persons would be eligible to receive relocation benefits as displaced persons under these regulations. If a claimant demonstrates that such prohibited action caused him or her to move, he or she will be treated as a displaced person hereunder, if he or she otherwise meets the definition of a displaced person.

## Subpart B—Uniform Relocation Assistance

### § 777.21 General procedures.

(a) *Planning Prior to Site Selection.* When acquisition of a site under consideration would likely involve displacement of a person eligible under § 777.13 for relocation assistance, the Postal Service representative shall prepare a relocation needs and availability analysis. The Postal Service representative shall include in the analysis a complete inventory of persons who may be displaced and specifically identify their needs.

(b) *Planning Subsequent to Site Selection.* Subsequent to site selection, the Postal Service must review the relocation needs and availability analysis

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and establish a specific plan for providing the assistance covered by these regulations to any eligible displaced persons. It will further determine the necessity of establishing an on-site relocation office which would be accessible to displaced persons and would be staffed with relocation personnel qualified to render all relocation services. The Postal Service will assure that cost estimates reflect current market conditions and that funding is available for all relocation assistance and activities.

(c) *Contracting for Relocation Services.* When the Postal Service determines it to be advantageous, it may enter into a relocation assistance service contract with a public agency or private firm having expertise in relocation assistance. The contract must require the contractor to follow Postal Service relocation assistance regulations.

(d) *Notice to Vacate, Ninety Day Requirement.* Postal Service notices to vacate must be issued at least 90 days prior to the date the property must be vacated. Any such notice must be in writing and delivered in person with receipt acknowledged, or by certified mail, return receipt requested. The 90-day requirement does not apply to any such notice issued subsequent to a valid notice to vacate issued by the prior owner of the property. A 90-day notice may be given with, or such notice may be combined with, but such notice must not be given before, the notice of displacement referred to in paragraph (f) of this section.

(e) *Shorter Notice Period, Unusual Circumstances.* An occupant may be required to vacate the property on less than 90 days advance written notice if the Postal Service determines that a 90-day notice is impracticable. An example of such a situation is when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety.

(f) *Notice of Displacement.* Normally, a notice of displacement will be given at the time of acquisition or later. Such notice must not be given earlier than the time of contracting, except in the case of acquisitions by eminent domain or by the threat of eminent domain. Such notice may be given at the time

of contracting or between the time of contracting and the time of acquisition if the Postal Service considers it wise to start the displacement process then and if, in the judgment of the Postal Service, it is clear that person will in fact be a displaced person.

(g) *Notice of Availability of Advisory Services.* The notice of displacement will state that relocation assistance advisory services will be available to the displaced person and will designate who will provide such services.

(h) *Eviction for cause.* Any person occupying real property and not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to relocation payments and other assistance unless the Postal Service determines that:

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

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

(3) In either case the eviction is not undertaken for the purpose of evading the obligation to make the relocation payments and other assistance available.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10667, Mar. 15, 1989]

**§ 777.22 Relocation assistance advisory services.**

(a) *General.* The Postal Service carries out an advisory assistance program for displaced persons.

(b) *Relocation Information.* The Postal Service must contact each displaced person to provide an informational statement outlining the assistance available to the particular person. If it is impracticable to contact the displaced persons personally, the informational statement must be mailed to the persons, certified mail, return receipt requested.

(c) *Time of Initial Contact to Provide Relocation Information.* The initial contact to provide relocation information must take place by the following dates:

(1) Where acquisition of the property is to occur as a result of the exercise or the threat of the exercise of eminent

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domain, at the time of initiation of negotiation or within 30 days thereafter.

(2) In any other instance such contact must be made prior to acquisition and prior to the notice of displacement or the notice to vacate, but it should normally not be made prior to contracting for the acquisition.

(d) *Service to be Provided.* The advisory program shall include such services as may be necessary or appropriate to:

(1) Provide current information on the availability, purchase prices, financing, and rental costs of replacement dwellings.

(2) For displaced persons eligible for replacement housing payments, explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling is made available.

(i) At the request of the displaced person, the Postal Service must inform that person, in writing, of the specific comparable replacement dwelling used as the basis for the replacement housing payment offer, the price or rent used to establish the upper limit of that offer, the basis for the determination, and the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing must be inspected by the Postal Service representative prior to its being made available to assure that it is a comparable replacement dwelling and meets the decent, safe, and sanitary standard. The displaced person must be notified that a replacement housing payment will not be made unless the replacement dwelling is inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority displaced persons must be given reasonable opportunities to relocate to comparable dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Postal Service to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, must be

offered transportation to inspect housing to which they are referred.

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

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

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

(6) Upon selection of a replacement property by a displaced person, the Postal Service may arrange for a representative to assist the displaced person with necessary arrangements for the move.

**§ 777.23 Moving expenses.**

(a) *Eligibility.* (1) Residential displaced persons are entitled to benefits under paragraphs (b) and (c) of this section.

(2) Business and farm displaced persons are entitled to benefits under paragraphs (d) through (k) of this section.

(3) Those business or farm displaced persons who reside on the property where the business or farm operation is conducted are eligible for applicable benefits both as residents and as business or farm displaced persons, but no duplicate payments are allowed.

(4) Persons who are required to move or to move personal property from real property, an interest in which is not acquired by the Postal Service, when it is determined by the Postal Service that such move is necessary or reasonable because of the Postal Service's having acquired an interest in other real property owned or leased by such persons and on which such persons conduct a business or farm operation,

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under circumstances where such persons are displaced persons with regard to such other real property or would have been displaced persons with regard to such other real property had they been required to move or to move personal property from such other real property, are entitled to benefits as residential, business or farm displaced persons under paragraphs (a)(1) or (a)(2) of this section.

(5) Eligibility for moving expenses does not depend upon the owner's or tenant's actual occupancy of the displacement real property.

(b) *Allowable Expenses, Residential Moves.* Allowable moving expenses include:

(1) Transportation of the displaced person and his or her personal property. Transportation costs are limited to the costs of a move up to a distance of 50 miles unless the Postal Service determines that relocation beyond 50 miles is justified.

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

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

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

(5) Reasonable costs for insurance for the replacement value of the personal property being moved or stored.

(6) When determined to be fair and reasonable by the Postal Service the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee), but only where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving related expenses that are not listed as non-allowable under paragraph (1)(3) of this section and which the Postal Service determines to be reasonable and necessary.

(c) *Fixed payment for moving expenses, residential moves.* Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and re-

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

(d) *Allowable Expenses, Business and Farm Operations.* Allowable expenses include:

(1) The expenses allowed under paragraphs (b) (2), (4), (5) and (6) of this section;

(2) Transportation of personal property. Transportation costs are limited to a distance up to 50 miles unless the Postal Service makes a finding that relocation beyond 50 miles is justified.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property as described in paragraph (d)(8) of this section. This includes connection to utilities available at the replacement site or building and minor modifications to personal property to adapt it to the replacement site or building. Excluded are expenses for providing utilities to or installing utilities at the replacement site or building and expenses for repair, alteration, improvement or modification of the replacement site or building. This exclusion includes, but is not limited to, any repairs, alterations, improvements, or modifications required by local code to bring the building up to standard.

(4) Any license, permit, or certification fee required of the displaced person by a governmental authority at the replacement location. However, this payment is limited to the pro rata value for the remaining useful life of any existing license, permit, or certification.

(5) Reasonable professional services necessary for planning the move of the personal property. Such professional services must be approved in advance by the Postal Service and shall not exceed the lowest of three acceptable bids.

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

(7) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

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

(ii) The estimated cost of moving the item no more than 50 miles, but with no allowance for storage.

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

(i) The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale. (To be eligible for payments under paragraph (d)(8) of this section, the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary.)

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Postal Service for eligible moving and related expenses, but with no allowance for storage.

(9) A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, which the Postal Service determines to be reasonable and which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from

home, time spent searching (based on reasonable salary or earnings) and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(10) Other moving-related expenses, not listed as non-allowable under paragraph (l)(3) of this section, which the Postal Service determines to be reasonable and necessary.

(e) *Fixed Payment in Lieu of Moving Expenses, Business Moves.* Any displaced business, other than an outdoor advertising display business, or a non-profit organization, is eligible for a fixed payment in lieu of actual moving and related expenses. This payment must be in an amount equal to the average annual net earnings of the business at that location, as computed under paragraph (i) of this section, but not less than \$1,000 nor more than \$20,000. For a displaced person to qualify for this payment, the Postal Service must determine that:

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

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

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

(4) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see paragraph (h) of this section). However, the Postal Service may waive this test for good cause.

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

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

- (1) The same premises and equipment are shared;
- (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
- (4) The same person or closely related persons own, control, or manage the affairs of the entities.

(g) *Fixed Payment in Lieu of Moving Expenses, Farm Operation.* Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (i) of this section, but not less than \$1,000 nor more than \$20,000. For a displaced person to qualify for this payment, the Postal Service must determine that the farm operation contributed materially to the income of the displaced person during the two taxable years prior to the displacement (see paragraph (h) of this section). In the case of acquisition of land which was part of a farm operation before the acquisition, the fixed payment shall be made only if the Postal Service determines that:

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

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

(h) *Contributes materially.* The term "contributes materially," as used in paragraphs (e) and (g) of this section means that, during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Postal Service determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5,000; or

(2) Had average annual net earnings of at least \$1,000; or

(3) Contributed at least 33½ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Postal Service may approve the use of other criteria as determined appropriate.

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

(j) *Nonprofit Organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of \$2,500, if the Postal Service determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Postal Service demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Postal Service.

(k) *Relocation of Outdoor Advertising Signs.* The amount of a payment for direct loss of an advertising sign which is personal property is the lesser of:

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(1) The depreciated replacement cost of the sign, as determined by the Postal Service, less the proceeds from its sale; (To be eligible for payments under this paragraph (k)(1), the claimant must make a good faith effort to sell the sign, unless the Postal Service determines that such effort is not necessary.) or

(2) The estimated cost of moving the sign, no more than 50 miles, but with no allowance for storage.

(1) *Payment for actual reasonable reestablishment expenses, nonresidential moves.* In addition to the payments available as allowable expenses for nonresidential moves, a small business, farm or non-profit organization may be eligible to receive a payment, not to exceed \$10,000 for expenses actually incurred in relocating and reestablishing such small business, farm or non-profit organization at a replacement site.

(1) *Allowable expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Postal Service. They may include the following:

(i) Repairs or improvements to the replacement real property as required by federal, state, local law, code or ordinance.

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

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

(iv) Installation of security or fire protection devices.

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

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

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

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

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

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

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(xi) Increased costs of operation during the first two years at the replacement site, not to exceed \$5,000, for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges including impact fees or one time assessments for anticipated heavy utility usage.

(xii) Other items that the Postal Service considers essential to the reestablishment of the business.

(2) *Non-allowable expenses.* Following is a non-exclusive listing of restablishment expenditures not considered to be reasonable, necessary or otherwise allowable.

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

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

(iii) Interior or exterior refurbishment at the replacement site which are for cosmetic purposes only.

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

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

(vi) Payment to a person whose sole business at a replacement dwelling is the rental of such dwelling to others.

(m) *General Provisions—(1) Self moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service.

(2) *Transfer of Ownership.* Upon request by the Postal Service and in accordance with applicable law, the displaced person may transfer to the Postal Service ownership of any personal property that is not to be moved, sold, or traded-in by executing a disclaimer of all rights or interest in the property.

(3) *Non-Allowable Expenses.* Except as specifically otherwise provided herein, a displaced person is not entitled to payment for:

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- (i) The cost of moving any structure or other real property improvement.
- (ii) Loss of goodwill.
- (iii) Loss of profits.
- (iv) Loss of trained employees.
- (v) Any additional operating expenses of a business or farm operation caused by operating in a new location.
- (vi) Personal injury.
- (vii) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the displaced person before the Postal Service.
- (viii) Expenses for searching for a replacement dwelling.
- (ix) Costs for storage of personal property on real property owned or leased by the displaced person.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987; 54 FR 10667, Mar. 15, 1989]

**§ 777.24 Replacement housing payments.**

(a) Residential displaced persons are eligible for replacement housing payments as follows:

(1) Residential displaced persons who lawfully and continuously owned and occupied a displacement dwelling for not less than 180 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (b) of this section. Such displaced persons may alternately choose the benefits under paragraph (f) of this section.

(2) Residential displaced persons who lawfully and continuously owned and occupied, and residential displaced persons who were tenants and lawfully and continuously occupied, a displacement dwelling for not less than 90 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (e) of this section.

(3) Where the replacement housing payment provided hereunder does not provide for housing within the financial means (see § 777.18(j)) of the displaced person, see § 777.27, Last Resort Housing.

(b) *Benefits for 180 Day Owner Occupants.* Displaced persons eligible under paragraph (a)(1) of this section are entitled to benefits as set out below:

- (1) An amount which is the sum of:
- (i) The amount which must be added to the acquisition cost of the displace-

ment dwelling to provide a total amount equal to the lesser of:

(A) The reasonable cost of a comparable replacement dwelling as determined by paragraph (c) of this section; or

(B) The purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person; plus

(ii) Interest Cost (see paragraph (d) of this section); plus

(iii) Incidental Expenses (see paragraph (h) of this section).

(2) The benefits in paragraph (b)(1) of this section, are limited to a maximum payment of \$22,500.

(3) The benefits in paragraph (b)(1) of this section, are available only if a decent, safe and sanitary replacement dwelling is purchased within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in a court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(c) *Determining the Cost of a Comparable Replacement Dwelling.* The cost of a comparable replacement dwelling for purposes of benefits to be paid to 180 day owner occupants will be determined by applying the following:

(1) If available, at least three representative comparable replacement dwellings must be examined and the payment offer computed on the cost of the fair market value of the dwelling most closely comparable to the displacement dwelling.

(2) To the extent, feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located. If this is not possible, comparable replacement dwellings will be selected from nearby or similar neighborhoods where housing costs are similar.

(d) *Increased Mortgage Interest Costs.* The amount to be paid to a displaced 180 day owner occupant for increased mortgage interest costs is the amount, if any, by which the present value of the interest on the mortgage loan(s) on the replacement dwelling plus any other debt service costs exceeds the present value of the interest on the

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mortgage loan(s) on the displacement dwelling plus purchaser's points and loan origination fees, subject to the following:

(1) The payment must be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling must be used to compute the payment.

(2) The payment must be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment must be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The new mortgage must be a bona fide mortgage and its interest rate must not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The discount rate used to compute the present value of the increased interest cost must be the prevailing interest rate paid on demand savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination fees, but not seller's points, are reimbursable to the extent they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, and the Postal Service determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, or the new mortgage amount, whichever is less.

(e) *Benefits for 90 Day Owner Occupant and Tenants.* Displaced persons eligible under paragraph (a)(2) of this section are entitled to benefits as set out below:

(1) Rental assistance benefits, as set out in paragraph (f) of this section or downpayment assistance benefits, as set out in paragraph (g) of this section.

(2) The benefits in paragraph (e)(1) of this section, are limited to \$5,250.

(3) The benefits in (e)(1) above are available only if a decent, safe and san-

itary replacement dwelling is purchased or rented within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in the court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(f) *Rental Assistance.* The rental assistance benefits, not to exceed \$5,250, for 90 day owner occupants and tenants will be computed as follows:

(1) The amount which must be added to 42 times the average monthly rental paid at the displacement dwelling (or, if the displaced person is an owner occupant, the fair market rental value had the displacement dwelling been rented) for the three-month period prior to displacement to provide a total amount equal to the lesser of:

(i) 42 times the reasonable monthly rental of a comparable replacement dwelling; or

(ii) 42 times the actual monthly rental cost of the decent, safe, and sanitary dwelling actually rented and occupied by the displaced person.

(2) If utilities are included in either the replacement dwelling or the displacement dwelling rent, appropriate utilities must be factored into both rentals. If utilities are not included in either monthly rental then the payment will be computed using the base rental rates.

(3) If, in the opinion of the Postal Service, the monthly rental at the displacement dwelling is significantly below the fair market rent of the displacement dwelling, such fair market rent must be used in computing the rental assistance payment.

(4) The payment under this section must be disbursed in a lump-sum amount unless the Postal Service determines on a case-by-case basis, for good cause, that the payment should be made in installments. Where the rental assistance payment exceeds \$5,250 under the provisions of Last Resort Housing, (§ 777.27), installment payments or payments through escrow accounts may be considered.

(g) *Downpayment assistance.* Downpayment assistance, not to exceed \$5,250, is available to 90 day owner occupants and 90 day tenants. This \$5,250

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amount may be considered to include the full amount of the required down-payment and incidental expenses.

(h) *Incidental Expenses.* Incidental expenses covered under paragraph (b)(1)(iii) or (g) of this section are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer (not to exceed the costs of such for a comparable replacement dwelling). They include:

- (1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- (2) Lender, FHA, or VA appraisal fees.
- (3) FHA or VA application fee.
- (4) Certification of structural soundness when required by the lender.
- (5) Credit report.
- (6) Owner's and mortgagee's evidence or assurance of title.
- (7) Escrow agent's fee.
- (8) State revenue or documentary stamps, sales or transfer taxes.
- (9) Such other costs as the Postal Service determines to be incidental to the purchase.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

**§ 777.25 Additional rules for replacement housing payments.**

(a) *Multiple Owners.* When a single family dwelling is owned by more than one person and occupied by only some of the 180 day owners (for example, when the dwelling is owned by an estate and only one of the heirs is in occupancy), the occupant(s) is (are) eligible to receive a maximum total price differential which is the lesser of:

- (1) The difference between (i) the reasonable cost of a comparable replacement dwelling, as determined under § 777.24(c) and (ii) the acquisition cost of the displacement dwelling; or
- (2) The difference between (i) the occupant's share of the acquisition cost of the displacement dwelling and (ii) the purchase price of a decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

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

(c) *Mixed Use and Multi-Family Properties Acquired.* If the displacement dwelling was part of a property that contained another dwelling unit or space used for non-residential purposes, or if it is located on a lot larger than that typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling and site can be considered its acquisition cost when computing the price differential.

(d) *Disaster-Related Insurance Proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the displacement dwelling must be included in the acquisition cost of the displacement dwelling when computing the price differential.

(e) *Inspection of Replacement Dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Postal Service must inspect the replacement dwelling and determine that it is a decent, safe, and sanitary dwelling.

(f) *Purchase of Replacement Dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person has purchased an existing dwelling; purchased and rehabilitated or moved and restored an existing dwelling; or constructed a new dwelling, provided in each instance the dwelling is determined to be decent, safe and sanitary.

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(g) *Conversion of Payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment may, within the required 12 month eligibility period, purchase a decent, safe and sanitary replacement dwelling. In such case, he or she is eligible to revise his or her original claim, and claim any additional assistance for which he or she was originally eligible. However, any portion of the rental assistance payment that has been disbursed must be deducted from the resultant replacement housing payment or downpayment assistance payment.

(h) *Payment After Death.* A replacement housing payment is personal to the displaced person. Upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.

(2) The full payment must be disbursed in any case in which a member of a displaced family dies and other family members continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

(i) *180 Day Owner Retention of Displacement Dwelling.* If a 180 day owner occupant retains ownership of his or her dwelling or the right to move his or her dwelling from the displacement site, and he or she moves it and reoccupies it on a replacement site, the cost of the actual replacement dwelling to be computed for purposes of § 777.24(b)(1)(i)(A) (not to exceed the purchase price of a comparable replacement dwelling) will be the sum of:

(1) The expenses of moving and restoring the retained dwelling to a condition comparable to that prior to the move; and

(2) The salvage or other value deducted from the acquisition cost for the retained ownership; and

(3) Additional costs, if necessary, incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

(4) The cost of the replacement site, not to exceed the cost of a comparable available and suitable replacement site.

(j) *90 Day Owner/Retention of Displacement Dwelling.* A 90 day owner occupant who retains ownership of his or her dwelling or the right to remove his or her dwelling may receive the benefits as if he or she were a 180 day owner occupant subject, however, to a limitation of \$5,250 on maximum benefits in lieu of the \$22,500 limitation set out in paragraph § 777.24(b)(2).

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

**§ 777.26 Mobile homes.**

(a) *Moving Expenses.* Displaced persons who are occupants of mobile homes are eligible for moving expenses under § 777.23 subject to the following:

(1) If the person owns the mobile home, moving expenses may, at the owner's option, include any reasonable costs incurred to move the mobile home to a replacement site, plus the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up charges."

(2) If the person rents the mobile home, the Postal Service may allow the person moving expense benefits for moving the mobile home as if the person were an owner of the mobile home under paragraph (a)(1) of this section.

(3) If costs of moving a mobile home are paid as moving expenses under paragraph (a)(1) or (2) of this section, the person may not receive housing assistance benefits hereunder, other than any benefits to which they are entitled that are limited to the site of the mobile home.

(4) Displaced occupants of mobile homes are eligible for moving expenses for personal property other than the mobile home and its appurtenances, but only to the extent the Postal Service does not pay the costs of moving the mobile home (either as moving expenses or replacement housing payments or, if it does pay such costs, the

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personal property is of a type that is customarily moved separately from the mobile home.)

(b) *Replacement Housing Payments.* Displaced persons who are 180 day or 90 day occupants of mobile homes qualify for replacement housing payments under § 777.24 subject to the following:

(1) If the displaced person owns the mobile home and owns the site, the person is eligible for benefits under either § 777.24 (b) or (e).

(2) If the displaced person rents the mobile home and rents the site the person is eligible for benefits under § 777.24(e).

(3) If the displaced person rents the mobile home and owns the site the person is eligible for benefits under § 777.24(e), with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of \$22,500. (Persons who voluntarily sell mobile home sites are not displaced persons and are not entitled to benefits under Subpart B. See § 777.13(e)(2)(viii)).

(4) If the displaced person owns the mobile home and rents the site the person is eligible for benefits under either § 777.24 (b) or (e) with regard to the mobile home and to benefits as a tenant under § 777.24(e) with regard to the site, subject to a limitation on home and site benefits combined of \$5,250.

(c) *Special Rules for Mobile Homes.* (1) In computing replacement housing payments for mobile home owners under paragraph (b) of this section, apply the terms of § 777.25 (i) and (j) as appropriate, to transactions involving moving the mobile home to a new site.

(2) The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. When the Postal Service determines that its acquisition of the real property has had this effect and that for this reason a mobile home occupant located on the remaining part of the property is required to move, such occupant shall be considered a displaced person under these regulations and shall be entitled to such benefits hereunder as the person would otherwise qualify.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

**§ 777.27 Last resort housing.**

(a) *Basic Determination to Provide Last Resort Housing.* A displaced person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to him or her which is within his or her financial means. When such comparable replacement dwelling is not available, additional measures may be taken to provide for "last resort" housing for eligible displaced persons.

(b) *Basic Rights of Persons to be Displaced.* The provisions of this section do not deprive any displaced person of any rights the person may have under these regulations such as the right to accept the maximum replacement housing payment available under these regulations and to move to a decent, safe and sanitary replacement dwelling even if such dwelling is beyond the person's financial means.

(c) *Methods of Providing Replacement Housing.* The Postal Service has broad latitude in implementing this section, but implementation must be on a reasonable cost basis. The Postal Service may provide last resort housing using the following methods:

(1) Rehabilitation of and/or additions to an existing replacement dwelling.

(2) The construction of a new replacement dwelling.

(3) The provision of a direct loan which requires regular amortization or deferred repayment. Terms of such loan will be at the discretion of the Postal Service.

(4) A replacement housing payment in excess of the \$5,250 and \$22,500 limitations contained in § 777.24. A rental subsidy under this section may be provided in installments.

(5) The relocation and any needed rehabilitation of a replacement dwelling.

(6) The purchase or lease of land and/or a replacement dwelling by the Postal Service and subsequent sale or lease to, or exchange with, a displaced person.

(7) The removal of barriers to the handicapped.

(8) Any other method determined by the Postal Service to be reasonable.

(d) *Proof of Financial Need.* Last Resort Housing benefits exceeding the limitations under § 777.24(b)(2) and

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§ 777.24(e)(2) will not be paid unless required to provide housing within the displaced person's financial means. To establish financial means, the displaced person must furnish the Postal Service proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

### § 777.28 Claims and appeals.

(a) *Preparation of Claim.* The relocation representative should assist eligible displaced persons in the preparation of claims for moving assistance and relocation housing assistance. Preliminary review should be conducted in the field by the relocation representative with the displaced person, to preclude technical difficulties in processing the claim at a higher level.

(b) *Documentation.* Any claim for a relocation payment must be supported by such documentation as may be required to support the claim, for example the length of occupancy at the displacement dwelling, the rent paid at the displacement dwelling, expenses incurred in relocating, etc. A displaced person must be provided reasonable assistance to complete and file any required claim.

(c) *Time for Filing.* All claims must be filed with the Postal Service within 18 months after the date of the actual move from the displacement property.

(d) *Review, Approval and Payment.* The Postal Service will review claims within 60 days of submission and approve or disapprove payment. Upon approval or partial approval of the displaced person's claim, the Postal Service will promptly authorize payment of the approved amount. The certification that the claimant has occupied decent, safe, and sanitary housing must be completed prior to final payment of replacement housing payments.

(e) *Relocation Payments Not Considered as Income.* Upon approval of the claim and delivery of the relocation payment, the displaced person must be advised that no relocation payment made under these procedures shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for

the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

(f) *Certification.* Certification that a person is displaced will be provided any agency requiring such information to assist that person under any Federal law or program.

(g) *Advance of Funds.* If the displaced person cannot arrange for the acquisition of a replacement property because of financial problems and the problems would be solved by an advance of funds, the Postal Service may determine the estimated amount of the actual claim and authorize an advance of that amount or a portion thereof. The displaced person will be fully informed in writing that his or her final claim will then be subject to adjustment. Advance payments should not be made to persons with a history of financial irresponsibility.

(h) *Money Owed to the Postal Service.* In cases of Postal Service leasing the acquired property to a displaced persons, or in cases of advance moving cost payments, any monies due the Postal Service by the displaced person and not paid before the remainder of the relocation payments are made must be deducted from such payments and the relocation file so documented.

(i) *Notice of Denial of Claim.* If the Postal Service disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of the determination, the basis for the determination, and the procedures for appealing the determination.

(j) *Appeal Procedure.* If a displaced person wishes to file an appeal:

(1) The appeal must be in writing.

(2) The appeal must be directed to the General Manager, Real Estate Division, and must set forth the displaced person's reasons for the appeal. (The General Manager shall not have taken part in the decision which led to the appeal. Appeals misdirected to others must be forwarded immediately to the General Manager with notification of the forwarding to the appellant.)

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(3) The appeal must be submitted within 60 days after the displaced person receives written notification of the Postal Service's original determination concerning the displacee's claim. The Postal Service may extend this time limit for good cause.

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

(l) *Review of Files by Appellant.* The Postal Service must permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are confidential. Such inspection will be permitted as allowed under the Freedom of Information Act, 39 CFR Part 265.

(m) *Scope of Review.* In deciding an appeal, the Postal Service must consider all pertinent justification and other material submitted by the displaced person and all other available information that is needed to ensure a fair and full review of the appeal.

(n) *Determination and Notification After Appeal.* Promptly after receipt of all supporting information submitted by the appellant, the General Manager, Real Estate Division, must make a written determination on the appeal, including the basis on which the decision was made, and furnish the appellant a copy. If the full relief requested is not granted at the Service Center level, the General Manager, Real Estate Division, must advise the person of his or her right to appeal the decision to the Director, Office of Real Estate. The rules stated here for appeals to the General Manager apply as well as to appeals to the Director, Office of Real Estate.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

**Subpart C—Acquisition****§ 777.31 Acquisition procedures.**

(a) *Policy; Application of Section.* The Postal Service, as a matter of policy, acquires interests in real property through voluntary agreements with owners. Only under unusual and compelling circumstances, and on a case-by-case basis, does the Postal Service

acquire real property through the exercise or the threat of the exercise of eminent domain. This policy does not, however, prevent the Postal Service from occasionally entering into mutually agreeable condemnation proceedings with an owner, where price is not an issue, and for such purposes as to clear title or to acquire property from certain elected officials. For the purposes of this section, the Postal Service does not consider such voluntary and mutually agreeable uses of condemnation proceedings as the exercise or the threat of the exercise of eminent domain.

(1) *Notice to Owner.* As soon as feasible after deciding to acquire a specific property through the exercise of eminent domain, the Postal Service must notify the owner of its intent to acquire the property.

(2) *Expeditious Negotiations.* The Postal Service must make every reasonable effort to acquire real property expeditiously by negotiation.

(3) *Appraisal and Invitation to Owner.* Before the initiation of negotiations, the real property shall be appraised in accordance with Postal Service appraisal standards as outlined in RE-1 and the owner or the owner's designated agent shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(4) *Establishment of Offer of Just Compensation.* Prior to the initiation of negotiations (see § 777.13(k) for definition) the Postal Service must establish an amount which it believes is just compensation for the real property rights to be acquired. The amount must not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Appraisers shall not give consideration to, or include in their real property appraisals, any allowances for the benefits provided by title II of the Act.

(5) *Summary Statement.* Promptly after determining fair market value, the Postal Service shall make a written offer to acquire the property for the full amount believed to be just compensation. Along with the written

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purchase offer, the owner must be given a written statement of the basis for the offer of just compensation. This statement must include:

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

(ii) The location and description of the real property and the interest(s) to be acquired.

(iii) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify and separately held ownership interest in the improvement(s), for example, a tenant-owned improvement.

(6) *Basic Negotiation Procedures.* The Postal Service must make every reasonable effort to contact the owner or the owner's representative and:

(i) Discuss the Postal Service's offer to purchase the property including the basis for the offer of just compensation, and;

(ii) Explain Postal Service acquisition policies and procedures including the provisions for the payment of incidental expenses as described under § 777.33.

(7) *Opportunity to Consider Offer.* The owner must be given a reasonable opportunity to consider the Postal Service's offer, to present material which he or she believes is relevant to determining the value of the property, and to suggest modification in the proposed terms and conditions of the purchase. The Postal Service must consider the owner's presentation.

(8) *Updating Offer of Just Compensation.* If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Postal Service must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase

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offer is warranted, the Postal Service must promptly reestablish just compensation and offer the revised amount to the owner in writing.

(9) *Contracts and Options.* Contracts to purchase shall cover only those items related to the acquisition of the property, and not incorporate provisions for making payments for relocation costs or related costs under title II of these regulations.

(10) *Title II Benefits Not To Be Considered.* In the event of condemnation, estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II.

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

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

(13) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the Postal Service must either:

(i) Pay the agreed purchase price to the owner; or

(ii) In the case of a condemnation proceeding, deposit with the court for the benefit of the owner an amount not less than the amount of the approved appraised value of the property or the amount of the award of compensation in the condemnation proceeding for the property.

(14) *Right-of-Entry.* With the prior approval of the owner, the Postal Service may obtain a right-of-entry before making payment to the owner.

### § 777.32 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property,

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the Postal Service must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This must include any improvement of a tenant owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Special Conditions.* Payment for tenant-owned improvements will be made to the tenant only if he or she meets the following conditions:

(1) In consideration for the payment the tenant-owner assigns, transfers, and releases to the Postal Service all of the tenant-owner's rights, title, and interests in the improvement;

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

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

(c) *Preservation of Tenant's Rights.* Nothing in this section shall be construed to deprive the tenant-owner of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

### § 777.33 Expenses incidental to transfer of title to the Postal Service.

(a) *Reimbursement.* When property is acquired through the exercise or the threat of the exercise of eminent domain, the owner shall be reimbursed for all reasonable expenses he or she necessarily incurred in conveying the real property to the Postal Service for:

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

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

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

(b) *Direct Payment.* Whenever feasible the Postal Service must pay these costs directly and thus avoid the need for an owner to pay such costs and then seek reimbursement from the Postal Service.

(c) *Certain Litigation Expenses.* The owner of the real property acquired must be reimbursed any reasonable expenses, including reasonable attorney, appraisal, and engineering fees which the owner actually incurred because of a condemnation proceeding if:

(1) The final judgment of the court is that the Postal Service cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the Postal Service other than under an agreed-upon settlement; or

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

## Subpart D—Voluntary Acquisitions

### § 777.41 Acquisition procedures.

(a) *Voluntary Acquisitions.* Acquisition rules for voluntary purchases are set out in Handbook RE-1, Realty Acquisition and Management and cover such areas as appraisal and negotiation procedures.

(b) *Tenant-Owned Improvements.* In general the Postal Service deals exclusively with the fee owner on the acquisition of all real property interest at the site. The Postal Service may, however, in exceptional cases deal directly with a tenant on a leasehold improvements matter. Should the Postal Service acquire the fee interest without acquiring rights in a leasehold improvement under circumstances in which the tenant would be entitled to compensation under § 777.32 of this part, if the acquisition were by eminent domain or the threat thereof, the tenant will be entitled to the benefits that would, under such circumstances, have been paid under § 777.32 of this part, unless the tenant has formally disclaimed further right in the real property improvement beyond the time of the expiration of his or her tenancy.

**Subpart E—Donations****§ 777.51 Acceptance of donations.**

Nothing in these regulations shall prevent a person from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Postal Service. The Postal Service may obtain an appraisal of the real property for income tax or other purposes if the owner thereof requests the Postal Service to do so.

**PART 778—INTERGOVERNMENTAL REVIEW OF POSTAL SERVICE FACILITY ACTIONS**

Sec.

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AUTHORITY: 39 U.S.C. 401.

SOURCE: 48 FR 29376, June 24, 1983, unless otherwise noted.

**§ 778.1 What is the purpose of these regulations?**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations

also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, which the Postal Service follows as a matter of policy.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct federal development projects.

(c) These regulations are not intended to create any right or benefit enforceable at law by a party against the Postal Service or its officers.

(d) These regulations implement Executive Order 12372 and are adopted under the Postal Reorganization Act rather than the statute and Executive Order listed in paragraph (a) of this section to the extent the statute and Executive Order do not apply to the Postal Service under 39 U.S.C. 410(a).

**§ 778.2 What definitions apply to these regulations?**

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

**§ 778.3 What categories of facility project actions of the Postal Service are subject to these regulations?**

The Postal Service publishes in the *FEDERAL REGISTER* a list of its categories of facility project actions that are subject to these regulations.

**§ 778.4 What are the Postal Service's general responsibilities under the Order?**

(a) The Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the Postal Service's facility project actions.

(b) If a state adopts a process under the Order to review and coordinate proposed direct Federal development