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IDAPA 39
TITLE 03
Chapter 44

**39.03.44 - RULES GOVERNING HIGHWAY RELOCATION ASSISTANCE FOR PERSONS DISPLACED
BY PUBLIC PROGRAMS**

000. LEGAL AUTHORITY.

The following rule may apply to all persons displaced as a result of any federally assisted state or local governmental program or project and authorized by Chapters 1 and 20, Title 40, and Chapter 11, Title 58, Idaho Code, and any amendments thereto. (12-14-89)

001. TITLE AND SCOPE.

The purpose of this rule is to ensure that persons displaced as a result of all state, federal or federally assisted projects are treated fairly, consistently and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole and in a manner that is efficient and cost effective. (12-14-89)

002. -- 009. (RESERVED).

010. DEFINITIONS.

01. Agency. Means any subdivision or entity of state or local government in the state of Idaho authorized by law to engage in any highway program or perform any highway project in which the acquisition of real property may result in the displacement of any person (see Subsection 010.18.) and also means any department, agency or instrumentality of the state of Idaho or any political subdivision thereof which is financed in whole or in part by funds furnished by the federal government and which is authorized by the laws of the state of Idaho to acquire property by eminent domain. (12-14-89)

02. Appraisal. Means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. (12-14-89)

03. Business. Means any lawful activity, except a farm operation, that is conducted: (12-14-89)

a. Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or (12-14-89)

b. Primarily for the sale of services to the public; or (12-14-89)

c. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or (12-14-89)

d. By a nonprofit organization that has established its non-profit status under applicable federal or state law. (12-14-89)

04. Comparable Replacement Dwelling. Means a dwelling which is: (12-14-89)

a. Decent, safe and sanitary as described in Subsection 010.07. (12-14-89)

b. Functionally equivalent to the displacement dwelling means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (12-14-89)

c. Adequate in size to accommodate the occupants; in an area not subject to unreasonable adverse environmental conditions, and that is not generally less desirable than the location of the displaced person's dwelling with

respect to public utilities and commercial and public facilities and is reasonably accessible to the person's place of employment. (12-14-89)

d. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements, such as outbuildings, swimming pools or greenhouses (see Subsection 50I.Ol.b.). (12-14-89)

e. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar governmental housing assistance. (12-14-89)

f. Within the financial means of the displaced person and is: a replacement dwelling purchased by a homeowner in occupancy for at least one hundred eighty (180) days prior to initiation of negotiations is considered to be within the homeowner's financial means, if the homeowner is paid the full price differential as described in Subsection 500.03.; all increased mortgage interest costs as described in Subsection 500.04.; and all incidental expenses as described in Subsection 500.05., plus any additional amount required to be paid under replacement housing of last resort; a replacement dwelling rented by an eligible displaced person is considered to be within his financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling; for a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancies requirements, comparable replacement rental housing is considered to be within the person's financial means if an agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds thirty (30) percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such assistance must be paid under replacement housing of last resort. (12-14-89)

05. Contribute Materially. Means that during the two (2) taxable years prior to the taxable year in which displacement occurs or during such other period as the agency determines to be more equitable, a business or farm operation: (12-14-89)

a. Had average annual gross receipts of at least five thousand dollars (\$5,000); or (12-14-89)

b. Had average annual net earnings of at least one thousand dollars (\$1,000); or (12-14-89)

c. Contributed at least thirty three and one third (33-1/3) percent of the owner's or operator's average annual gross income from all sources. (12-14-89)

d. If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate. (12-14-89)

06. Date of Displacement. Means the date used for determining eligibility for relocation payments and is either the date the person moves, or if later, the date a comparable replacement dwelling is made available. The definition applies only to persons who would otherwise have been displaced by the project and not to persons who would have been evicted for cause. (12-14-89)

07. Decent, Safe and Sanitary Dwelling. Means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the federal agency funding the project. The dwelling shall (12-14-89)

a. Be structurally sound, weather tight and in good repair. (12-14-89)

b. Contain a safe electrical wiring system adequate for lighting and other electrical devices. (12-14-89)

c. Contain a heating system capable of sustaining a healthful temperature (of approximately seventy (70) degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system. (12-14-89)

d. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator. (12-14-89)

e. Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two (2) means of egress. (12-14-89)

f. For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by such displaced person. (12-14-89)

08. Displaced Person. Means any person (defined in Subsection 010.18.) who moves from the real property or moves his personal property from the real property. This includes a person who occupies the real property prior to its acquisition, but, who does not meet the length of occupancy requirements of the Uniform Act: (12-14-89)

a. As a direct result of the agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described in Subsection 010.13.; or (12-14-89)

b. As a result of a written order from the acquiring agency to vacate such real property for the project; or (12-14-89)

c. As a direct result of rehabilitation or demolition for a project; or (12-14-89)

d. As a result of the agency's acquisition of, or written order to vacate for a project, other real property on which the person conducts a business or farm operation. Eligibility as a displaced person under this subsection applies only for purposes of obtaining relocation assistance advisory services under Section 304. and moving expenses under Subsection 400.01. through 03. (12-14-89)

09. Dwelling. Means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family or multi purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit. (12-14-89)

10. Farm Operation. Means any activity conducted primarily for the production of agricultural products or commodities, including timber (for sale and home use), and producing agricultural products or commodities in sufficient quantity to contribute materially to the operator's support. (12-14-89)

11. Federal Agency. Means any department, agency or instrumentality in the executive branch of the federal government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Bank and branches thereof, and any person who has the authority to acquire property by eminent domain under federal law. (12-14-89)

12. Federal Financial Assistance. Means any federal grant, loan or contribution, except a federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual. (12-14-89)

13. Initiation of Negotiations. Means the delivery of the initial written offer by the agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable federal program regulations specify a different action to serve this purpose. (12-14-89)

14. Mortgage. Means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state in which the real property is located, together with the credit instruments, if

any, secured thereby. (12-14-89)

15. Non-profit Organization. Means an organization that is incorporated under the applicable laws of a state as a non-profit organization, and exempt from paying federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501). (12-14-89)

16. Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance. Means written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of federal financial assistance. (12-14-89)

17. Owner of Displacement Dwelling. Means a displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project: (12-14-89)

a. Fee title, a life estate, a ninety-nine (99) year lease or a lease, including any options for extension, with at least fifty (50) years to run from the date of acquisition; or (12-14-89)

b. An interest in a cooperative housing project, which includes the right to occupy a dwelling; or (12-14-89)

c. A contract to purchase any of the interests or estates described in Subsections 010.17.a. and b.; or (12-14-89)

d. Any other interest, including a partial interest, which in the judgment of the agency warrants consideration as ownership. (12-14-89)

18. Person. Includes every natural person, firm, fiduciary, co-partnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, and may include any individual or family. (12-14-89)

19. Persons Not Displaced. The following is a nonexclusive listing of persons who do not qualify as a displaced person under this rule. (12-14-89)

a. A person who moves before the initiation negotiations (see also Subsection 501.04.) unless the agency determines that the person was displaced as a direct result of the program or project; or (12-14-89)

b. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or (12-14-89)

c. A person who is not required to relocate permanently as a direct result of a project, such determination shall be made by the agency in accordance with any guidelines established by the federal agency funding the project; or (12-14-89)

d. A person who the agency determines is not displaced as a direct result of a partial acquisition; or (12-14-89)

e. A person who, after receiving a notice of relocation eligibility (described in Subsection 301.02.), is notified in writing that he will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or (12-14-89)

f. An owner-occupant who voluntarily sells his or her property (in accordance with any guidelines established by the federal agency funding the project) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or (12-14-89)

g. A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law. (12-14-89)

20. Program or Project. Means any activity or series of activities undertaken by a agency with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. (12-14-89)
21. Salvage Value. Means the probable sale price of an item if offered for sale, on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis. (12-14-89)
22. Small Business. Means a business having at least one (1), but no more than five hundred (500) employees working at the site being acquired or displaced by a program or project (12-14-89)
23. Tenant. Means a person who has the temporary use and occupancy of real property owned by another. (12-14-89)
24. Uneconomic Remnant. Means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owners property, and which the acquiring agency has determined has little or no value or utility to the owner. (12-14-89)
25. Uniform Act. Means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; Pub. L. 91-646, 42 USC 4601, et seq) and amendments thereto. (12-14-89)
26. Unlawful Occupancy. Means a person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the agency to be a squatter who is occupying real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. (12-14-89)
27. Utility Costs. Means expenses for heat, lights, water and sewer. (12-14-89)
28. Utility Facility. Means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned. (12-14-89)
29. Utility Relocation. Means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction. (12-14-89)

011.-- 099. (RESERVED).

100. NO DUPLICATION OF PAYMENTS.

No person shall receive any payment under this rule if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as such payment under this rule. (12-14-89)

101. MANNER OF NOTICES.

Each notice, which the agency is required to provide to a property owner or occupant under this rule, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translations and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. (12-14-89)

102. --199. (RESERVED).

200. APPEALS.

01. General. The agency shall promptly review appeals in accordance with the requirements of applicable law and this rule (12-14-89)

02. Actions Which May be Appealed. A person may file a written appeal with the agency in any case in which the person believes that the agency has failed to properly determine the person's eligibility for (including last resort housing), or the amount of, a relocation payment required under this rule. The agency shall consider a written appeal regardless of form. (12-14-89)

03. Time Limit for Initiating Appeal. The agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than sixty (60) days after the person receives written notification of the agency's determination on the person's claim. (12-14-89)

04. Right to Representation. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense. (12-14-89)

05. Review of Files by Person Making Appeal. The agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the agency. The agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws. (12-14-89)

06. Scope of Review of Appeal. In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal. (12-14-89)

07. Determination and Notification After Appeal. Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall advise the person of his or her right to seek judicial review. (12-14-89)

08. Agency Official to Review Appeal. The agency official conducting the review of the appeal shall be either the head of the agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed. (12-14-89)

201. -- 299. (RESERVED).

300. GENERAL RELOCATION REQUIREMENTS.

01. Purpose. This Section prescribes general requirements governing the provision of relocation payments and other relocation assistance under this rule. (12-14-89)

02. Applicability. These requirements apply to the relocation of any displaced person as defined in Subsection 010.08. (12-14-89)

301. RELOCATION NOTICES.

01. General Information Notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the agency's relocation program, which does at least the following: (12-14-89)

a. Informs the person that he may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s). (12-14-89)

b. Informs the person that he will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate. (12-14-89)

c. Informs the person that he will not be required to move without at least ninety (90) days' advance written notice and informs any person to be displaced from a dwelling that he cannot be required to move permanently unless at least one

(1) comparable replacement dwelling has been made available. (12-14-89)

d. Describes the person's right to appeal the agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible. (12-14-89)

02. Notice of Relocation Eligibility. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Subsection 010.13.) for the occupied property. When this occurs, the agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance (12-14-89)

03. Ninety (90) Day Notice (12-14-89)

a. General. No lawful occupant shall be required to move unless he has received at least ninety (90) days' advance written notice of the earliest date by which he may be required to move. (12-14-89)

b. Timing of Notice. The displacing agency shall issue the notice ninety (90) days before it expects the person to be displaced. This notice may be issued earlier to allow more than ninety (90) days' notice. (12-14-89)

c. Content of Notice. The ninety (90) day notice shall state a specific date as the earliest date by which the occupant is required to move, or state that the occupant will receive a further notice indicating, at least thirty (30) days in advance, the specific date by which he must move. If the ninety (90) day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than ninety (90) days after such a dwelling is made available. (12-14-89)

d. Urgent Need. In unusual circumstances, an occupant may be required to vacate the property on less than ninety (90) days' advance written notice, if the agency determines that a ninety (90) day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the agency's determination shall be included in the applicable case file. (12-14-89)

302. AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT.

01. General. No person to be displaced shall be required to move from his or her dwelling unless at least one (1) comparable replacement dwelling (defined in Subsection 010.04.) has been made available to the person. Where possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if: (12-14-89)

a. The person is informed of its location; and (12-14-89)

b. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and (12-14-89)

c. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property. (12-14-89)

02. Circumstances Permitting Waiver. The federal agency funding the project may grant a waiver of the policy Section 301. of this rule in any case where it is demonstrated that a person must move because of: (12-14-89)

a. A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 USC 5121); or (12-14-89)

b. A presidentially declared national emergency; or (12-14-89)

c. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public. (12-14-89)

03. Basic Conditions of Emergency. Whenever a person is required to relocate for a temporary period because

of an emergency as described in Subsection 302.02. of this rule, the agency shall: (12-14-89)

- a. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and (12-14-89)
- b. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and (12-14-89)
- c. Make available to the displaced person, as soon as feasible, at least one (1) comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.) (12-14-89)

303. (RESERVED).

304. RELOCATION ASSISTANCE ADVISORY SERVICES.

01. General. The agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in Subsection 304.02.b. of this rule. If the agency determines that a person occupying property adjacent to the real property acquired for the project has been caused substantial economic injury because of such acquisition, it may offer the services to such person. (12-14-89)

02. Services to be Provided. The advisory program shall include such measures, facilities and services as may be necessary or appropriate in order to: (12-14-89)

a. Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements and the procedures for obtaining such assistance. This shall include a personal interview with each person. (12-14-89)

b. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available as set forth in Subsection 302.01. of this rule; As soon as feasible, the agency shall inform the person in writing of a comparable replacement dwelling for rent or purchase within the entitlement amount (see Subsections 501.01. and 02.) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he may qualify; Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards (see Subsections 010.04. and 07.). If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary; Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling; All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred. (12-14-89)

c. Provide current and continuing information on the availability, purchase prices and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location. (12-14-89)

d. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate. (12-14-89)

e. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced and technical help to persons applying for such assistance. (12-14-89)

f. Any person who occupies property acquired by an agency, when such occupancy began subsequent to the

acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency. (12-14-89)

03. Coordination of Relocation Activities. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (12-14-89)

305. EVICTION FOR CAUSE.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiations of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that (12-14-89)

01. Prior to Contact. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or (12-14-89)

02. Violations. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and (12-14-89)

03. Avoidance. In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this rule. (12-14-89)

306. GENERAL REQUIREMENTS - CLAIMS FOR RELOCATION PAYMENTS.

01. Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment. (12-14-89)

02. Expeditious Payments. The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made, as soon as feasible, following receipt of sufficient documentation to support the claim. (12-14-89)

03. Advance Payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. (12-14-89)

04. Time for Filing. All claims for a relocation payment shall be filed with the agency within eighteen (18) months after: For tenants, the date of displacement; for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later. This time period shall be waived by the agency for good cause. (12-14-89)

05. Multiple Occupants of One (1) Displacement Dwelling. If two (2) or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two (2) or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments. (12-14-89)

06. Deductions From Relocation Payments. An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a state agency may deduct from relocation payments any rent that the displaced person owes the agency, provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Section 302. of this rule. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor. (12-14-89)

07. Notice of Denial of Claim. If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination and the procedures for appealing that determination. (12-14-89)

08. Relocation Payments Not Considered as Income. No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low-income housing assistance (12-14-89)

307. -- 399. (RESERVED).

400. PAYMENT FOR MOVING AND RELATED EXPENSES.

01. Payment for Actual Reasonable Moving and Related Expenses ~ Residential Moves. Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined in Subsection 010.08.) is entitled to a payment of his actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for: (12-14-89)

a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless the agency determines that relocation beyond fifty (50) miles is justified. (12-14-89)

b. Packing, crating, unpacking and uncrating of the personal property. (12-14-89)

c. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property. (12-14-89)

d. Storage of the personal property for a period not to exceed twelve (12) months, unless the agency determines that a longer period is necessary. (12-14-89)

e. Insurance for the replacement value of the property in connection with the move and necessary storage. (12-14-89)

f. The replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft or damage is not reasonably available. (12-14-89)

g. Other moving-related expenses that are not listed as ineligible under Subsection 400.11. as the agency determines to be reasonable and necessary. (12-14-89)

02. Fixed Payment for Moving Expenses – Residential Moves. Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under Subsection 400.01. 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 (2) 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 fifty dollars (\$50). (12-14-89)

03. Eligible Costs for Actual Reasonable Moving and Related Expenses - Nonresidential Moves. Any business or farm operation which qualifies as a displaced person (defined in Subsection 010.08.) is entitled to payment for such actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for: (12-14-89)

a. Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless the agency determines that relocation beyond fifty (50) miles is justified. (12-14-89)

b. Packing, crating, unpacking and uncrating of the personal property. (12-14-89)

c. Disconnecting, dismantling, removing, reassembling and reinstalling, relocated machinery, equipment and other personal property, including substitute personal property described in Subsection 400.03.1. of this rule. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement

structure, the replacement site or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.) (12-14-89)

d. Storage of the personal property for a period not to exceed twelve (12) months unless the agency determines that a longer period is necessary. (12-14-89)

e. Insurance for the replacement value of the personal property in connection with the move and necessary storage. (12-14-89)

f. Any license, permit or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit or certification. (12-14-89)

g. The replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available. (12-14-89)

h. Professional services necessary for: Planning the move of the personal property; Moving the personal property; and Installing the relocated personal property at the replacement location. (12-14-89)

i. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move. (12-14-89)

j. Actual direct financial loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of: The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the (wholesale) cost of goods to the business, not the potential (retail) selling price.; or the estimated cost of moving the item, but with no allowance for storage. If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of fifty (50) miles. (12-14-89)

k. The reasonable cost incurred in attempting to sell an item that is not to be relocated. (12-14-89)

l. Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of: The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or the estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate. (12-14-89)

m. Searching for a Replacement Location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed one thousand dollars (\$1,000), as the agency determines to be reasonable, which are incurred in searching for a replacement location; Transportation; Meals and lodging away from home; Time spent searching, based on reasonable salary or earnings; 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. (12-14-89)

n. Other moving-related expenses that are not listed as ineligible under Subsection 400.11. as the agency determines to be reasonable and necessary. (12-14-89)

04. Notification and Inspection. The following requirements apply to payments under this section: (12-14-89)

a. The agency shall inform the displaced person in writing of the requirements of Subsections 400.04.b. and c., as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in Section 301. (12-14-89)

b. The displaced person must provide the agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the agency

may waive this notice requirement after documenting its file accordingly. (12-14-89)

c. The displaced person must permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move. (12-14-89)

05. Self Moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the agency shall make a payment for the person's moving expenses in an amount not to exceed the lower of two (2) acceptable bids or estimates obtained by the agency or prepared by qualified staff. At the agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. (12-14-89)

06. Transfer of Ownership. Upon request and in accordance with applicable laws, the claimant shall transfer to the agency ownership of any personal property that has not been moved, sold or traded in. (12-14-89)

07. Advertising Signs. The amount of a payment for direct financial loss of an advertising sign, which is personal property, shall be the lesser of: (12-14-89)

or a. The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; (12-14-89)

b. The estimated cost of moving the sign, but with no allowance for storage. (12-14-89)

08. Re-Establishment Expenses - Non-Residential Moves. In addition to the payments available under Subsection 400.03, a small business, as defined in Subsection 010.22., farm or nonprofit organization may be eligible to receive a payment, not to exceed ten thousand dollars (\$10,000), for expenses actually incurred in relocating and re-establishing such small business, farm, or nonprofit organization at a replacement site. (12-14-89)

09. Eligible Re-Establishment Expenses. Must be reasonable and necessary, as determined by the agency. They may include, but are not limited to, the following: (12-14-89)

a. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance. (12-14-89)

b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. (12-14-89)

c. Construction and installation costs, not to exceed one thousand five hundred dollars (\$1,500) for exterior signing to advertise the business. (12-14-89)

d. Provision of utilities from right-of-way to improvements on the replacement site. (12-14-89)

e. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. (12-14-89)

f. Licenses, fees and permits when not paid as part of moving expenses. (12-14-89)

g. Feasibility surveys, soil testing and marketing studies. (12-14-89)

h. Advertisement of replacement location, not to exceed one thousand five hundred dollars (\$1,500). (12-14-89)

i. Professional services in connection with the purchase or lease of a replacement site. (12-14-89)

j. Estimated increased costs of operation during the first two (2) years at the replacement site, not to exceed five thousand dollars (\$5,000) for such items as: Lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees. (12-14-89)

k. Impact fees or one (1) time assessments for anticipated heavy utility usage. (12-14-89)

1. Other items that the agency considers essential to the re-establishment of the business. (12-14-89)
 - m. Expenses in excess of the regulatory maximums set forth in Subsections 400.09.c., h., and j. of this rule may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the agency, be waived by the federal agency funding the program or project, but in no event shall total costs payable under this section exceed the ten thousand dollars (\$10,000) statutory maximum. (12-14-89)
10. Ineligible Expenses. The following is a non exclusive listing of re-establishment expenditures not considered to be reasonable, necessary, or otherwise eligible: (12-14-89)
 - a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures. (12-14-89)
 - b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation. (12-14-89)
 - c. Interior and exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in Subsection 400.09.e. in this rule. (12-14-89)
 - d. Interest on money borrowed to make the move or purchase the replacement property. (12-14-89)
 - e. Payment to a part-time business in the home which does not contribute materially to the household income. (12-14-89)
11. Ineligible Moving and Related Expenses. A displaced person is not entitled to payment for: (12-14-89)
 - a. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under Subsection 500.03.d. of this rule; or (12-14-89)
 - b. Interest on a loan to cover moving expense; or (12-14-89)
 - c. Loss of goodwill; or (12-14-89)
 - d. Loss of profits; or (12-14-89)
 - e. Loss of trained employees; or (12-14-89)
 - f. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Subsection 400.09 j. of this rule; or (12-14-89)
 - g. Personal injury; or (12-14-89)
 - h. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency; or (12-14-89)
 - i. Expenses for searching for a replacement dwelling; or (12-14-89)
 - j. Physical changes to the real property at the replacement location of a business or farm operation except as provided in Subsections 400.03.C. and 400.09. of this rule; or (12-14-89)
 - k. Costs for storage of personal property on real property already owned or leased by the displaced person. (12-14-89)
12. Fixed Payment for Business Moving Expenses -- Nonresidential Moves. A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of

a payment for actual moving and related expenses and actual reasonable re-establishment as provided in Subsections 400.08. and 400.11., of this rule. The payment shall equal the average annual net earnings of the business, as computed in accordance with Subsection 400.16. of this rule, but not less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000). The displaced business is eligible for the payment, if the agency determines that: (12-14-89)

a. The business owns or rents personal property which must be removed 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. (12-14-89)

b. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency demonstrates that it will not suffer a substantial loss of its existing patronage; and (12-14-89)

c. The business is not part of a commercial enterprise having more than three (3) entities, which are not being acquired by the agency, and which is under the same ownership and engaged in the same or similar business activities. (12-14-89)

d. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others. (12-14-89)

e. The business is not operated at the displacement site solely for the purpose of renting the site to others. (12-14-89)

f. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement (see Subsection 010.05.). (12-14-89)

13. Determining the Number of Businesses. In determining whether two (2) or more displaced legal entities constitute a single business, which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which: (12-14-89)

a. The same premises and equipment are shared. (12-14-89)

b. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled. (12-14-89)

c. The entities are held out to the public and to those customarily dealing with them as one (1) business; and (12-14-89)

d. The same person or closely related persons own, control or manage the affairs of the entities. (12-14-89)

14. Farm Operation. A displaced farm operation (defined in Subsection 010.10.) may choose a fixed payment in lieu of a payment for actual moving and related expenses and reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with Subsection 400.16. of this rule, but not less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000). In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that: (12-14-89)

a. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or (12-14-89)

b. The partial acquisition caused a substantial change in the nature of the farm operation. (12-14-89)

15. Nonprofit Organization. A displaced nonprofit organization may choose a fixed payment of one thousand dollars (\$1,000) to twenty thousand dollars (\$20,000), in lieu of the payments for actual moving and related expenses and actual reasonable re-establishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the agency demonstrates otherwise. Any payment in excess of one thousand dollars (\$1,000) must be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition. The amount to be used for the payment is the

average of two (2) years annual gross revenues less administrative expenses. (12-14-89)

16. Average Annual Net Earnings of a Business or Farm Operation. The average annual net earnings of a business or farm operation are one-half (1/2) of its net earnings before federal, state and local income taxes during the two (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 two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements or other reasonable evidence, which the agency determines is satisfactory. (12-14-89)

17. Discretionary utility relocation payments. Whenever a highway program or project undertaken by the displacing agency causes the relocation of a utility facility (see Subsection 010.28.) the agency shall pay for any expenses determined eligible in accordance with ITD Rule 39.03.43, rather than any provisions of this rule. (12-14-89)

401. -- 499. (RESERVED).

500. REPLACEMENT HOUSING PAYMENTS.

01. Eligibility for Replacement Housing Payment for One Hundred Eighty (180) Day Homeowner-Occupants. A displaced person is eligible for the replacement housing payment for a one hundred eighty (180) day homeowner-occupant if the person: (12-14-89)

a. Has actually owned and occupied the displacement dwelling for not less than one hundred eighty (180) days immediately prior to the initiation of negotiations; and (12-14-89)

b. Purchases and occupies a decent, safe and sanitary replacement dwelling within one (1) year after the later of the following dates (except that the agency may extend such one (1) year period for good cause): The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or the date the displacing agency's obligation under Section 302. of this rule, is met. (12-14-89)

02. Amount of Total Payment for Replacement Housing for One Hundred Eighty (180) Day Homeowner-Occupants. The replacement housing payment for an eligible one hundred eighty (180) day homeowner-occupant may not exceed twenty-two thousand five hundred dollars (\$22,500). (See also Section 501.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one (1) year from the date the displaced home owner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of: (12-14-89)

a. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Subsection 500.03., "Price Differential," of this rule; and (12-14-89)

b. The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Subsection 500.04. of this rule (12-14-89)

c. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Subsection 500.05. of this rule. (12-14-89)

03. Price Differential for Replacement Housing Payment for One Hundred Eighty (180) Day Homeowner-Occupant (12-14-89)

a. Determination of Price Differential. The price differential to be paid under Subsection 500.02.a. of this rule, is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of: The reasonable cost of a comparable replacement dwelling as determined in accordance with Subsection 501.01.; or the purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person. (12-14-89)

b. Mixed-use and Multi-family Properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or was located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential. (12-14-89)

c. Insurance Proceeds. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss of the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see Subsection 500.03.d. of this rule.) (12-14-89)

d. Owner Retention of Displacement Dwelling. If the owner retains ownership of his dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of: The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and the cost of making the unit a decent, safe and sanitary replacement dwelling (defined in Subsection 010.07.); and the current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and the retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment. (12-14-89)

04. Increased Mortgage Interest Costs for Replacement Housing Payment for One Hundred Eighty (180) Day Homeowner-Occupant. The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under Subsection 500.02.b. of this rule. The payment for increased mortgage interest costs shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least one hundred eighty (180) days prior to the initiation of negotiations. Subsections 500.04.a through e. of this rule shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling. (12-14-89)

a. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed one hundred eighty (180) days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. (12-14-89)

b. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter. (12-14-89)

c. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgage lending institutions in the area in which the replacement dwelling is located. (12-14-89)

d. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid they are not paid as incidental expenses; they do not exceed rates normal to similar real estate transactions in the area; the agency determines them to be necessary; and the computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section. (12-14-89)

e. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended. (12-14-89)

05. Incidental Expenses. The incidental expenses to be paid under Subsections 500.02.C. or 500.09.a. are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer, including: (12-14-89)

a. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary

- fees, preparing surveys and plats, and recording fees. (12-14-89)
- b. Lender, FHA or VA application and appraisal fees. (12-14-89)
 - c. Loan origination or assumption fees that do not represent prepaid interest. (12-14-89)
 - d. Certification of structural soundness and termite inspection, when required. (12-14-89)
 - e. Credit report. (12-14-89)
 - f. Owner's and mortgage's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling. (12-14-89)
 - g. Escrow agent's fee. (12-14-89)
 - h. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling). (12-14-89)
 - i. Such other costs as the agency determines to be incidental to the purchase. (12-14-89)
06. Rental Assistance Payment for One Hundred Eighty (180) Day Homeowner. A one hundred eighty (180) day homeowner-occupant, who is eligible for a replacement housing payment under Subsection 500.01. but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed five thousand two hundred fifty dollars (\$5,250), computed and disbursed in accordance with Subsection 500.08. (12-14-89)
07. Eligibility for Replacement Housing Payment for Ninety (90) Day Occupants. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed five thousand two hundred fifty dollars (\$5,250) for rental assistance, as computed in accordance with Subsection 500.08. of this rule, or down payment assistance, as computed in accordance with Subsection 500.09. of this rule, if such displaced person: (12-14-89)
- a. Has actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and (12-14-89)
 - b. Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year (unless the agency extends this period for good cause) after: For a tenant, the date he moves from the displacement dwelling, or for an owner-occupant, the later of: the date he receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moves from the displacement dwelling. (12-14-89)
08. Rental Assistance Payment for Ninety (90) Day Occupants. (12-14-89)
- a. Amount of Payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed five thousand two hundred fifty dollars (\$5,250) for rental assistance (See Subsection 501.07.). Such payment shall be forty-two (42) times the amount obtained by subtracting the base monthly rent for the displacement dwelling from the lesser of: The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or the monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person. (12-14-89)
 - b. Base Monthly Rental for Displacement Dwelling. The base monthly rental for displacement. dwelling is the lesser of: The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency. For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or thirty (30) percent of the person's average gross household income. If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in Subsection 500.08.b. of this rule. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.; or the total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities. (12-14-89)

c. Manner of Disbursement. A rental assistance payment may, at the agency's discretion, be disbursed in either lump sum or in installments. However, except as limited by Subsection 501.04. of this rule, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing. (12-14-89)

09. Down Payment Assistance Payment for Ninety (90) Day Occupant. (12-14-89)

a. Amount of Payment. An eligible displaced person who purchases a replacement dwelling is entitled to a down-payment assistance payment in the amount the person would receive under Subsection 500.08.b. of this rule, if the person rented a comparable replacement dwelling. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Subsection 500.02. if he met the one hundred eighty (180) day occupancy requirement. A displaced person eligible to receive a replacement housing payment for a one hundred eighty (180) day homeowner-occupant under Subsection 500.01. is not eligible for this payment. (12-14-89)

b. Application of Payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses. (12-14-89)

501. ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS.

01. Determining Cost of Comparable Replacement Dwelling. The maximum (upper limit) of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined in Subsection 010.04). (12-14-89)

a. If available, at least three (3) comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of and equal to or better than the displacement dwelling. An adjustment shall be made to the asking price of any dwelling to the extent justified by local market data. An obviously overpriced dwelling may be ignored. (12-14-89)

b. If the site of the comparable lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the differential payment. (12-14-89)

c. If the acquisition of a part of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. (12-14-89)

d. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. (12-14-89)

02. Inspection of Replacement Dwelling. Before making a replacement housing payment or releasing a payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe and sanitary dwelling as defined in Subsection 010.07. (12-14-89)

03. Purchase of Replacement Dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person: (12-14-89)

a. Purchases a dwelling; or (12-14-89)

b. Purchases and rehabilitates a substandard dwelling; or (12-14-89)

c. Relocates a dwelling which he owns or purchases; or (12-14-89)

d. Constructs a dwelling on a site he owns or purchases; or (12-14-89)

e. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the

person owns or purchases; or (12-14-89)

f. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value. (12-14-89)

04. Occupancy Requirements for Displacement or Replacement Dwelling. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including: (12-14-89)

a. A disaster, an emergency or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the agency; or (12-14-89)

b. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty or hospital stay, as determined by the agency. (12-14-89)

05. Conversion of Payment. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Subsection 500.08, is eligible to receive a payment under Subsections 500.01. or 500.09. if he meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one (1) year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Subsections 500.01. or 500.09. (12-14-89)

06. Payment After Death. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that: (12-14-89)

a. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid. (12-14-89)

b. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe and sanitary replacement dwelling. (12-14-89)

c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate. (12-14-89)

07. Replacement Housing of Last Resort. (12-14-89)

a. Determination to provide replacement housing of last resort. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as specified in Subsections 500.01. or 500.07. of this rule, as appropriate, the agency shall provide additional assistance under the provisions of this Subsection 500.04. Any decision to provide last resort housing assistance must be adequately justified either: On a case-by-case basis, for good cause, which means that appropriate consideration has been given to: the availability of comparable replacement housing in the program or project area; and the resources available to provide comparable replacement housing; and the individual circumstances of the displaced person; or by a determination that: there is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and a program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and the method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?) (12-14-89)

b. Basic rights of persons to be displaced. Notwithstanding any provision of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The agency shall not require any displaced person to accept a dwelling provided by the agency under these procedures (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. (12-14-89)

c. Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to

case-by-case analysis is justified for an entire project. (12-14-89)

d. The methods of providing replacement housing of last resort include, but are not limited to: a replacement housing payment in excess of the limits set forth in Subsections 500.01. and 500.07. of this rule. A rental assistance subsidy under this Subsection 501.07. may be provided in installments or in a lump sum at the agency's discretion. Rehabilitation of and/or additions to an existing replacement dwelling; the construction of a new replacement dwelling; the provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free; the relocation and, if necessary, rehabilitation of a dwelling; the purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to; or exchange with a displaced person; the removal of barriers to the handicapped; the change in status of the displaced person with his concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment. (12-14-89)

e. Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with Subsection 010.04.b. of this rule. (12-14-89)

f. The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under Subsections 500.01. and 500.07. of this rule, because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is thirty (30) percent of the person's gross monthly household income. Such assistance shall cover a period of forty-two (42) months. (12-14-89)

502. -- 599. (RESERVED).

600. MOBILE HOMES.

01. Applicability. This section describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of these regulations. Except as modified by this section, such a displaced person is entitled to a moving expense payment in accordance with Section 400. and a replacement housing payment in accordance with Section 500. to the same extent and subject to the same requirements as persons displaced from conventional dwellings. (12-14-89)

02. Moving and Related Expenses - Mobile Homes. (12-14-89)

a. A homeowner occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his mobile home on an actual cost basis in accordance with Subsection 400.01. A non- occupant owner of a rented mobile home is eligible for actual cost reimbursement under Subsection 400.03. (However, if the mobile home is not acquired by the agency but the homeowner occupant obtains a replacement housing payment under one (1) of the circumstances described in Subsection 600.03.C., the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.) (12-14-89)

b. The following rules apply to payments for actual moving expenses under Subsection 400.01.: A displaced mobile home owner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges; if a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable; or a nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation. (12-14-89)

03. Replacement Housing Payments for One Hundred Eighty (180) Day Mobile Homeowner Occupants. A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed

twenty-two thousand five hundred dollars (\$22,500) under Subsection 500.01.f (12-14-89)

a. The person both owned the displacement mobile home and occupied it on the displacement site for at least one hundred eighty (180) days immediately prior to the initiation of negotiations; (12-14-89)

b. The person meets the other basic eligibility requirements in Subsection 500.01.; and (12-14-89)

c. The agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the agency but the owner is displaced from the mobile home because the agency determines that the mobile home: is not and cannot economically be made decent, safe and sanitary; or cannot be relocated without substantial damage or unreasonable cost; or cannot be relocated because there is no available comparable replacement site; or cannot be relocated because it does not meet mobile home park entrance requirements. (12-14-89)

d. If the mobile home is not actually acquired, but the agency determines that it is not economically feasible to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described in Subsection 500.03., shall include the salvage value or trade-in value of the mobile home, whichever is higher. (12-14-89)

04. Replacement Housing Payments for Ninety (90) Day Mobile Home Occupants. A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed five thousand two hundred fifty dollars (\$5,250), under Subsection 500.07. if: (12-14-89)

a. The person actually occupied the displacement mobile home on the displacement site for at least ninety (90) days immediately prior to the initiation of negotiations; (12-14-89)

b. The person meets the other basic eligibility requirements in Subsection 500.07.; and (12-14-89)

c. The agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the agency but the owner or tenant is displaced from the mobile home because of one (1) of the circumstances described in Subsection 600.03.C. (12-14-89)

05. Additional Rules Governing Relocation Payment to Mobile Home Occupants. (12-14-89)

a. Replacement Housing Payment Based on Dwelling and Site. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Section 500. However, the total replacement housing payment under Section 500. shall not exceed the maximum payment (either twenty two thousand five hundred dollars (\$22,500) or five thousand two hundred fifty dollars (\$5,250)) permitted under the section that governs the computation for the dwelling. (See also Subsection 501.02.) (12-14-89)

b. If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling. (12-14-89)

c. If the agency determines that it would be practical to relocate the mobile home, but the owner- occupant elects not to do so, the agency may determine that for purposes of computing the price differential under Subsection 500.03. the cost of a comparable replacement dwelling is the sum of: The value of the mobile home; the cost of any necessary repairs or modifications; and the estimated cost of moving the mobile home to a replacement site. (12-14-89)

d. Initiation of negotiations. If the mobile home is not actually acquired by the agency, but the occupant is considered displaced under these regulations, the "initiation of negotiations" is the initiation of negotiations to acquire the land or, if the land is not acquired, the written notification that he is a displaced person under these regulations. (12-14-89)

e. Person moves mobile home. If the owner is reimbursed for the cost of moving the mobile home under

these regulations, he is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(12-14-89)

f. Partial acquisition of mobile home park. The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under these regulations.

(12-14-89)

601. -- 999. (RESERVED).