

EXHIBIT “A”

**TARRANT REGIONAL WATER DISTRICT
Relocation Assistance and Real Property Acquisition Policies
for the
Trinity River Vision Project**

Table of Contents

Chapter 1: General 1

 § 1.01 Purpose..... 1

 § 1.02 No duplication of payments..... 1

 § 1.03 Prevention of fraud, waste, and mismanagement. 1

 § 1.04 Notices. 1

 § 1.05 Compliance with other laws and regulations..... 2

 § 1.06 Records. 3

 § 1.07 Reports..... 3

 § 1.08 Policies Non-Contractual..... 3

 § 1.09 Policies Subject to Modification, Waiver or Amendment..... 3

Chapter 2: Definitions 4

 § 2.01 Definitions..... 4

Chapter 3: Appeals 13

 § 3.01 Prompt review..... 13

 § 3.02 Actions which may be appealed. 13

 § 3.03 Time limit for initiating appeal. 13

 § 3.04 Right to representation..... 13

 § 3.05 Review of files by person making appeal..... 13

 § 3.06 Scope of review of appeal..... 13

 § 3.07 Determination and notification after appeal. 13

 § 3.08 Agency official to review appeal. 14

Chapter 4: Real Property Acquisition 15

 § 4.01 Applicability. 15

 § 4.02 Exceptions..... 15

 § 4.03 Less-than-full-fee interests in real property..... 16

 § 4.04 Expeditious acquisition..... 16

 § 4.05 Notice, appraisal, and invitation to owner..... 16

 § 4.06 Appraisal not required..... 16

 § 4.07 Waiver valuation..... 16

 § 4.08 Establishment and offer of just compensation..... 17

 § 4.09 Summary statement..... 17

 § 4.10 Basic negotiation procedures..... 17

 § 4.11 Updating offer of just compensation..... 18

 § 4.12 Coercive action..... 18

 § 4.13 Administrative settlement..... 18

 § 4.14 Payment before taking possession..... 18

 § 4.15 Uneconomic remnant..... 19

§ 4.16	Inverse condemnation.	19
§ 4.17	Fair rental.	19
§ 4.18	Conflict of interest.	19
§ 4.19	Appraisal requirements.	19
§ 4.20	Environmental research.	20
§ 4.21	Influence of the Project on just compensation.	21
§ 4.22	Owner retention of improvements.	21
§ 4.23	Qualifications of appraisers and review appraisers.	21
§ 4.24	Review of appraisals.	21
§ 4.25	Acquisition of tenant-owned improvements.	22
§ 4.26	Expenses incidental to transfer of title to TRWD.	23
§ 4.27	Litigation expenses.	23
§ 4.28	Donations.	24
Chapter 5:	General Relocation Policies	25
§ 5.01	Applicability.	25
§ 5.02	General information notice.	25
§ 5.03	Notice of relocation eligibility.	25
§ 5.04	Ninety-day notice.	26
§ 5.05	Notice of intent to acquire.	26
§ 5.06	Availability of comparable replacement dwelling before displacement.	26
§ 5.07	Waiver of availability of comparable replacement dwelling.	27
§ 5.08	Basic conditions of emergency move.	27
§ 5.09	Relocation planning.	27
§ 5.10	Loans for planning and preliminary expenses.	28
§ 5.11	Relocation assistance advisory services.	28
§ 5.12	Coordination of relocation activities.	30
§ 5.13	Short-term occupancies.	31
§ 5.14	Eviction for cause.	31
§ 5.15	Requirements of claims for relocation payments.	31
§ 5.16	Aliens not lawfully present in the United States.	32
Chapter 6:	Payments for Moving and Related Expenses	35
§ 6.01	In general.	35
§ 6.02	Moves from a dwelling.	35
§ 6.03.	Moves from a mobile home.	35
§ 6.04	Moves from a business, farm or nonprofit organization.	36
§ 6.05	Personal property only.	37
§ 6.06	Advertising signs.	37
§ 6.07	Eligible actual moving expenses.	37
§ 6.08	Ineligible moving and related expenses.	40
§ 6.09	Notification and inspection (nonresidential).	40
§ 6.10	Transfer of ownership (nonresidential).	41
§ 6.11	Fixed payment for moving expenses—residential moves.	41
§ 6.12	Related nonresidential eligible expenses.	41
§ 6.13	Reestablishment expenses—nonresidential moves.	42
§ 6.14	Fixed payment for moving expenses—businesses.	43
§ 6.15	Fixed payment for moving expenses—farm operations.	44

§ 6.16	Fixed payment for moving expenses—nonprofit organizations.....	44
§ 6.17	Average annual net earnings of a business or farm operation.....	44
§ 6.18	Discretionary utility relocation payments.....	45
Chapter 7: Replacement Housing Payments		47
Subchapter A—180-day homeowner-occupants		47
§ 7.01	Eligibility.....	47
§ 7.02	Amount of payment.....	47
§ 7.03	Price differential.....	48
§ 7.04	Increased mortgage interest costs.....	48
§ 7.05	Incidental expenses.....	49
§ 7.06	Rental assistance payment for 180-day homeowner.....	50
Subchapter B—90-day homeowner-occupants		50
§ 7.07	Eligibility.....	50
§ 7.08	Amount of rental assistance payment.....	51
§ 7.09	Base monthly rental for displacement dwelling.....	51
§ 7.10	Manner of disbursement.....	52
§ 7.11	Downpayment assistance payment.....	52
Subchapter C—Additional rules governing replacement housing payments		52
§ 7.12	Determining cost of comparable replacement dwelling.....	52
§ 7.13	Inspection of replacement dwelling.....	53
§ 7.14	Purchase of replacement dwelling.....	53
§ 7.15	Occupancy requirements.....	54
§ 7.16	Conversion of payment.....	54
§ 7.17	Payment after death.....	54
§ 7.18	Insurance proceeds.....	55
Subchapter D—Replacement housing of last resort		55
§ 7.19	Determination to provide replacement housing of last resort.....	55
§ 7.20	Basic rights of persons to be displaced.....	56
§ 7.21	Methods of providing comparable replacement housing.....	56
Chapter 8: Mobile Homes		58
§ 8.01	Applicability.....	58
§ 8.02	Partial acquisition of mobile home park.....	58
§ 8.03	Eligibility for replacement housing payments.....	58
§ 8.04	Replacement housing payment computation.....	59
§ 8.05	Rental assistance payment.....	59
§ 8.06	Owner-occupant not displaced from the mobile home.....	59
§ 8.07	Replacement housing payment for 90-day mobile home occupants.....	60

Chapter 1: General

§ 1.01 Purpose.

The primary purpose of these Policies is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (the “Uniform Act”), in accordance with the following objectives:

- (1) To ensure that owners of real property to be acquired by Tarrant Regional Water District (“TRWD”) for TRWD’s Trinity River Vision Project are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, and to promote public confidence in land acquisition for the Trinity River Vision Project;
- (2) To ensure that persons displaced as a direct result of TRWD’s acquisition of real property for the Trinity River Vision Project are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of the Trinity River Vision Project, which is designed for the benefit of the public as a whole; and
- (3) To ensure that TRWD employees implement these regulations in a manner that is efficient and cost-effective.

§ 1.02 No duplication of payments.

(a) No person will receive any payment under these Policies if that person receives a payment under Federal, State, or local law, or insurance proceeds, which is determined by TRWD to have the same purpose and effect as payment under these Policies.

(b) TRWD will not conduct an exhaustive search for such other payments, but will avoid creating a duplication based on TRWD’s actual knowledge at the time a payment is computed.

§ 1.03 Prevention of fraud, waste, and mismanagement.

TRWD will take appropriate measures to carry out these Policies in a manner that minimizes the risk of fraud, waste, and mismanagement.

§ 1.04 Notices.

(a) Each notice which TRWD provides to a property owner or occupant under these Policies, except the notice described at § 4.05(b), will be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in TRWD files. Each notice will be written in plain, understandable language.

(b) Persons who are known to TRWD to be unable to read and understand the notice will be provided with appropriate translation and counseling.

(c) Each notice will indicate the name and telephone number of a TRWD representative who may be contacted for answers to questions or other needed help.

§ 1.05 Compliance with other laws and regulations.

TRWD's implementation of these Policies will to the greatest extent possible be in compliance with other applicable Federal and State laws and regulations, including, but not limited to, the following:

- (1) Section I of the Civil Rights Act of 1866 (42 U.S.C. §§ 1982 et seq.).
- (2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.).
- (3) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended.
- (4) The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.).
- (5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 790 et seq.).
- (6) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
- (7) The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.).
- (8) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.
- (9) Executive Order 11246—Equal Employment Opportunity, as amended.
- (10) Executive Order 11625—Minority Business Enterprise.
- (11) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.
- (12) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.
- (13) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.
- (14) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.).
- (15) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).
- (16) Texas Property Code Section 21.046.

§ 1.06 Records.

(a) TRWD will maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with these Policies.

(b) These records will be retained for at least three (3) years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled, or in accordance with the applicable regulations of the U.S. Army Corps of Engineers (“USACE”), whichever is later.

(c) These records are confidential regarding their use as public information, unless applicable law provides otherwise.

§ 1.07 Reports.

TRWD will submit a report of its real property acquisition and displacement activities if required by the USACE. The report will be prepared and submitted using the format contained in 49 C.F.R. Pt. 24, Appendix B.

§ 1.08 Policies Non-Contractual.

Except as expressly stipulated or required by law, these Policies do not create rights, including contractual or property rights, in any person. These policies are intended to provide guidelines for the administration and implementation of Federal and State laws but do not constitute warranties, representations, or a contract.

§ 1.09 Policies Subject to Modification, Waiver or Amendment.

Except as may be prohibited by law, these Policies may be modified, waived or amended by TRWD at any time.

Chapter 2: Definitions

§ 2.01 Definitions.

Unless otherwise noted, the following terms used in these Policies are understood as defined in this section:

(a) *Alien not lawfully present in the United States.* The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR § 103.12 and includes:

(1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. §§ 1101 et seq.) and whose stay in the United States has not been authorized by the United States Attorney General; and,

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

(b) *Appraisal.* The term “appraisal” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term “business” means any lawful activity, except a farm operation, that is conducted:

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

(2) Primarily for the sale of services to the public;

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the Project; or

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

(d) *Citizen.* The term “citizen” includes both citizens of the United States and noncitizen nationals.

(e) *Commercial move.* The term “commercial move” means a move performed by a professional mover.

(f) *Comparable replacement dwelling.* The term “comparable replacement dwelling” means a dwelling which is:

- (1) Decent, safe, and sanitary as described in § 2.01(h);
- (2) Functionally equivalent (as defined by § 2.01(n)) to the displacement dwelling;
- (3) Adequate in size to accommodate the occupants;
- (4) In an area not subject to unreasonable adverse environmental conditions;
- (5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- (6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (*See also* § 7.12(c));
- (7) Currently available to the displaced person on the private market without any subsidy under a government housing program, except as provided in § 2.01(f)(9); and
- (8) Within the financial means of the displaced person:
 - (A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 7.03, all increased mortgage interest costs as described at § 7.04 and all incidental expenses as described at § 7.05, plus any additional amount required to be paid under §§ 7.19-7.21.
 - (B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under these Policies, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 7.09.
 - (C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if TRWD pays that

portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in § 7.09. Such rental assistance will be paid under §§ 7.19-7.21.

For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling will apply. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.2(a)(6)(ix))

(g) *Contribute materially.* The term “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 TRWD determines to be more equitable, a business or farm operation:

- (1) Had average annual gross receipts of at least \$5,000;
- (2) Had average annual net earnings of at least \$1,000; or
- (3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

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

(h) *Decent, safe, and sanitary dwelling.* The term “decent, safe, and sanitary dwelling” means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code will apply unless waived for good cause by the USACE. 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 devices;
- (3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;
- (4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes must not exceed that permitted by local housing codes or, in the absence of local codes, the policies of TRWD, if any. In addition, TRWD will follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of TRWD, if any;

(5) Contain 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 must 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;

(6) Contains unobstructed egress to safe, open space at ground level; and

(7) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.2(a)(8)(vii))

(i) *Displaced person.*

(1) The term “displaced person” means, except as provided in § 2.01(i)(2), any person who moves from the real property or moves his or her personal property from the real property as a direct result of:

(A) A written notice of intent to acquire (*see* § 5.05), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for the Project;

(B) Rehabilitation or demolition for the Project; or

(C) A written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for the Project. However, eligibility for such person under this paragraph § 2.01(i)(1)(C) applies only for purposes of obtaining relocation assistance advisory services under § 5.11, and moving expenses under §§ 6.01-6.10.

This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 7.01 and § 7.07.

(2) The following is a nonexclusive listing of persons who do not qualify as displaced persons under these Policies:

(A) A person who moves before the initiation of negotiations (*see* § 7.15), unless TRWD determines that the person was displaced as a direct result of the Project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the Project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act or these Policies;

(D) A person who is not required to relocate permanently as a direct result of the Project. Such determination will be made by TRWD in accordance with any guidelines established by the USACE (For guidance, *see* 49 C.F.R Part 24, appendix A, § 24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property described in § 4.02(a) or (b), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for the Project is subject to these Policies.);

(F) A person whom TRWD determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at § 5.03), is notified in writing that he or she will not be displaced for the Project. Such written notification will not be issued unless the person has not moved and TRWD 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;

(H) An owner-occupant who conveys his or her property, as described in § 4.02(a) or (b), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, TRWD will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these Policies;

(I) A person who retains the right of use and occupancy of the real property for life following its acquisition by TRWD;

(J) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in §5.14. However, advisory assistance may be provided to unlawful occupants at the option of TRWD in order to facilitate the Project; or

(K) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 5.16.

(j) *Dwelling*. The term “dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house;

a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(k) *Dwelling site.* The term “dwelling site” means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.2(a)(11))

(l) *Farm operation.* The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(m) *Federal financial assistance.* The term “Federal financial assistance” means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(n) *Functionally equivalent.* The term “functionally equivalent” means that it performs the same function, and provides the same utility. 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, TRWD may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.2(a)(6))

(o) *Household income.* The term “household income” means total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. (See 49 C.F.R. Part 24, appendix A, §24.2(a)(14) for examples of exclusions to income.)

(p) *Initiation of negotiations.* Unless a different action is specified in applicable USACE regulations, the term “initiation of negotiations” means the following:

(1) Whenever the displacement results from the acquisition of the real property by TRWD, the initiation of negotiations means the delivery of the initial written offer of just compensation by TRWD to the owner or the owner's representative to purchase the real property for the Project. However, if the TRWD issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by TRWD), the initiation of negotiations means the notice to the person that he or she will be displaced by the Project or, if there is no notice, the actual move of the person from the property.

(3) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 4.02, the initiation of negotiations means the actions described in §§ 2.01(p)(1) and (2), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under these Policies, until there is a written agreement between TRWD and the owner to purchase the real property. (For guidance, *see* 49 C.F.R. Part 24, appendix A, §24.2(a)(15)(iv))

(q) *U.S. Department of Transportation.* The term “U.S. Department of Transportation” means the United States Department of Transportation acting through the Federal Highway Administration.

(r) *Mobile home.* The term “mobile home” includes manufactured homes and recreational vehicles used as residences. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.2(a)(17))

(s) *Mortgage.* The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

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

(u) *Owner of a dwelling.* The term “owner of a dwelling” means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

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

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

(3) A contract to purchase any of the interests or estates described in § 2.01(u)(1) or (2); or

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

(v) *Person*. The term “person” means any individual, family, partnership, corporation, or association.

(w) *Project*. The term “Project” means any activity or series of activities relating to the Trinity River Vision project undertaken with Federal financial assistance received or anticipated in any phase in accordance with USACE guidelines.

(x) *Salvage value*. The term “salvage value” means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(y) *Self-move*. The term “self-move” means a move performed by the displaced person.

(z) *Small business*. A “small business” is a business having not more than 500 employees working at the site being acquired or displaced by the Project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 6.12.

(aa) *Tenant*. The term “tenant” means a person who has the temporary use and occupancy of real property owned by another.

(bb) *TRWD*. The term “TRWD” means the Tarrant Regional Water District and its officers, employees, representatives, agents, or assigns.

(cc) *Uneconomic remnant*. The term “uneconomic remnant” means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which TRWD has determined has little or no value or utility to the owner.

(dd) *Uniform Act*. The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894; 42 U.S.C. §§ 4601 et seq.), and amendments thereto.

(ee) *Unlawful occupant*. An “unlawful occupant” is a person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. TRWD, at its discretion, may consider such person to be in lawful occupancy.

(ff) *USACE*. The term “USACE” means United States Army Corps of Engineers, and its employees, representatives, and agents.

(gg) *Utility costs.* The term “utility costs” means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(hh) *Utility facility.* The term “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.

(ii) *Utility relocation.* The term “utility relocation” means the adjustment of a utility facility required by the Project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means 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.

(jj) *Waiver valuation.* The term “waiver valuation” means the valuation process used and the product produced when TRWD determines that an appraisal is not required, pursuant to § 4.06 appraisal waiver provisions.

Chapter 3: Appeals

§ 3.01 Prompt review.

TRWD will promptly review all appeals in accordance with the requirements of applicable law and these Policies.

§ 3.02 Actions which may be appealed.

Any aggrieved person may file a written appeal with TRWD in any case in which the person believes that TRWD has failed to properly consider the person's application for assistance under these Policies. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 4.26 or § 4.27, or a relocation payment. TRWD will consider a written appeal regardless of form so long as it may fairly be characterized as such. Written communications will be conclusively presumed to satisfy this requirement if: (1) Denominated "Notice of Appeal"; (2) Addressed to "Real Property Director, TRWD, 800 E. North Side Drive, Fort Worth, Texas 76102"; and (3) Delivered via certified mail or registered mail, return receipt requested.

§ 3.03 Time limit for initiating appeal.

To be considered timely filed, an aggrieved person must file a written appeal with TRWD within 60 days after the person receives written notification of TRWD's determination of the person's claim.

§ 3.04 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.

§ 3.05 Review of files by person making appeal.

A person may inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential or privileged by TRWD.

§ 3.06 Scope of review of appeal.

In deciding an appeal, TRWD will 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.

§ 3.07 Determination and notification after appeal.

Promptly after receipt of all information submitted by a person in support of an appeal, TRWD will 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, TRWD will advise the person of his or her right to seek judicial review of the decision.

§ 3.08 Agency official to review appeal.

The General Manager of TRWD, or his or her authorized designee, who shall not have been involved in the underlying determination being appealed, will conduct the review of the appeal.

Chapter 4: Real Property Acquisition

§ 4.01 Applicability.

The requirements of this Chapter 4 apply to any acquisition of real property for the Project where there is Federal financial assistance in any part of the Project costs except for the acquisitions described in § 4.02. However, the relocation assistance provisions of these Policies are applicable to any tenants that must move as a result of an acquisition described in § 4.02. Such tenants are considered displaced persons. (*See* § 2.01(i))

§ 4.02 Exceptions.

(a) The requirements of this Chapter 4 do not apply to acquisitions that meet all of the following conditions in (1) through (4):

(1) No specific site or property needs to be acquired, although the TRWD may limit its search for alternative sites to a general geographic area. Where TRWD wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (For guidance, *see* 49 C.F.R Part 24, appendix A, § 24.101(b)(1)(i))

(2) The property to be acquired is not part of an intended, planned, or designated Project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(3) TRWD will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(4) TRWD will inform the owner in writing of what it believes to be the market value of the property. (For guidance, *see* 49 C.F.R Part 24, appendix A, §§ 24.101(b)(1)(iv) and (2)(ii))

(b) The requirements of this Chapter 4 do not apply to acquisitions for TRWD programs or projects receiving Federal financial assistance, where TRWD does not have authority to acquire the property by eminent domain, provided that TRWD:

(1) Prior to making an offer for the property, clearly advises the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and

(2) Informs the owner in writing of what it believes to be the market value of the property. (For guidance, *see* 49 C.F.R Part 24, appendix A, §§ 24.101(b)(1)(iv) and (2)(ii))

(c) The requirements of this Chapter 4 do not apply to acquisitions of real property from a Federal Agency, State, or State Agency, if TRWD does not have authority to acquire the property through condemnation.

§ 4.03 Less-than-full-fee interests in real property.

(a) The provisions of this Chapter 4 apply when TRWD:

- (1) Acquires fee title subject to retention of a life estate or a life use;
- (2) Acquires by leasing where the lease term, including option(s) for extension, is 50 years or more; and
- (3) Acquires permanent and/or temporary easements necessary for the Project.

(b) TRWD may apply this Chapter 4 to any less-than-full-fee acquisition that, in its judgment, should be covered.

(b) The provisions of this Chapter 4 do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

§ 4.04 Expeditious acquisition.

TRWD will make every reasonable effort to acquire real property expeditiously by negotiation.

§ 4.05 Notice, appraisal, and invitation to owner.

(a) As soon as feasible, TRWD will notify the owner in writing of TRWD's interest in acquiring the real property and the basic protections provided to the owner by law and these Policies.

(b) Before the initiation of negotiations, the real property to be acquired will be appraised (except as provided in § 4.06), and the owner, or the owner's designated representative, will be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

§ 4.06 Appraisal not required.

An appraisal is not required if:

- (1) The owner is donating the property and releases TRWD from its obligation to appraise the property; or
- (2) TRWD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

§ 4.07 Waiver valuation.

(a) When an appraisal is determined to be unnecessary under § 4.06(2), TWRD will prepare a waiver valuation. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

(b) With the approval of the USACE, TRWD may exceed the \$10,000 threshold of § 4.06(2), up to a maximum of \$25,000, if TRWD offers the property owner the option of having TRWD appraise the property. If the property owner elects to have TRWD appraise the property, TRWD will obtain an appraisal. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.102(c)(2))

§ 4.08 Establishment and offer of just compensation.

(a) Before the initiation of negotiations, TRWD will establish an amount which it believes is just compensation for the real property.

(b) The amount must not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. However, the amount may exceed the approved appraisal of the fair market value of the property if TRWD determines that a greater amount reflects just compensation for the property.

(c) A TRWD official will establish the amount believed to be just compensation. Promptly thereafter, TRWD will make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(d) The amount of just compensation for the real property will take into account the environmental conditions of the property, based upon the best available data at the time of appraisal and acquisition.

§ 4.09 Summary statement.

Along with the initial written purchase offer, the owner will be given a written statement of the basis for the offer of just compensation, which will include:

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

(2) A description and location identification of the real property and the interest in the real property to be acquired; and

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement will identify any other separately held ownership interest in the property and indicate that such interest is not covered by this offer.

§ 4.10 Basic negotiation procedures.

TRWD will make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment

of incidental expenses in accordance with § 4.26. The owner will be given a reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. TRWD will consider the owner's presentation. (For guidance, *see* 49 C.F.R Part 24, appendix A, § 24.102(f))

§ 4.11 Updating offer of just compensation.

If the information presented by the owner, or a material change in the known character or condition of the property, including environmental conditions, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, TRWD will have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, TRWD will promptly reestablish just compensation and offer that amount to the owner in writing.

§ 4.12 Coercive action.

TRWD will not advance the time of condemnation, 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.

§ 4.13 Administrative settlement.

(a) The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized TRWD official approves such administrative settlement as being reasonable, prudent, and in the public interest.

(b) All relevant facts and circumstances should be considered by the authorized TRWD official approving the administrative settlement. Appraisers, including review appraisers, will not be pressured to adjust their estimate of value for the purpose of justifying such settlements.

(c) When Federal funds pay for or participate in acquisition costs, a written justification will be prepared, which states what available information, including trial risks, supports such a settlement.

§ 4.14 Payment before taking possession.

(a) Before requiring the owner to surrender possession of the real property, TRWD will pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than TRWD's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

(b) In exceptional circumstances, with the prior approval of the owner, TRWD may obtain a right-of-entry for construction purposes before making payment available to an owner.

§ 4.15 Uneconomic remnant.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, TRWD will offer to acquire the uneconomic remnant along with the portion of the property needed for the Project. (See § 2.01(cc))

§ 4.16 Inverse condemnation.

If TRWD 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 legal proceedings to prove the fact of the taking of the real property.

§ 4.17 Fair rental.

If TRWD permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by TRWD on short notice, the rent will not exceed the fair market rent for such occupancy.

§ 4.18 Conflict of interest.

(a) The appraiser, review appraiser or person performing the waiver valuation must not have any interest, direct or indirect, in the real property being valued for TRWD.

(b) Compensation for making an appraisal or waiver valuation must not be based on the amount of the valuation estimate.

(c) No person may attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Unless waived by USACE, persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

(d) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by TRWD to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000 or less.

§ 4.19 Appraisal requirements.

(a) Appraisals are to be prepared according to these Policies, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) and to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), and applicable State law. (For guidance, *see* 49 C.F. R. Part 24, appendix A, § 24.103)

(b) The scope of work and development of an appraisal under these Policies depends on the complexity of the appraisal problem.

(c) TRWD will assure that the appraisals it obtains are relevant to the needs of the Project, reflect established and commonly accepted Federal, State, and federally-assisted

program appraisal practice, and at a minimum, meet the following requirements, which, together with other relevant requirements, shall be memorialized in an appraiser engagement letter to be signed by the appraiser and TRWD for each property to be appraised:

- (1) Comply with the definition of appraisal at § 2.01(b).
- (2) Contain an adequate description of the physical characteristics of the property interest being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five (5) year sales history of the property.
- (3) Utilize all relevant and reliable approaches to value consistent with established Federal, State, and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there will be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
- (4) Contain a description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- (5) Include a statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- (6) Contain the effective date of valuation, date of appraisal, signature, and certification of the appraiser.
- (7) Conform with these policies and the appraiser engagement letter authorizing the assignment.

§ 4.20 Environmental research.

(a) Prior to the appraisal, TRWD will perform preliminary research regarding the environmental conditions of the property to be acquired. Based upon this preliminary research, TRWD may perform further investigation and testing regarding the environmental conditions of the property to be acquired.

(b) The appraiser will be provided with copies of all existing written reports in TRWD's possession regarding the environmental conditions of the property to be acquired. The appraisal of the fair market value of the property will take into account all of the environmental conditions known, or made known, to TRWD at the time the appraisal is

made. The initial appraisal may be subject to revision if adverse environmental conditions are discovered.

§ 4.21 Influence of the Project on just compensation.

The appraiser will disregard any decrease or increase in the fair market value of the real property caused by the Project, or by the likelihood that the property would be acquired for the Project, other than that due to physical deterioration within the reasonable control of the owner. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.103(b))

§ 4.22 Owner retention of improvements.

If the owner of a real property improvement is permitted to retain the improvement for removal from the Project site, the amount to be offered for the interest in the real property to be acquired will be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 2.01(x)) of the retained improvement.

§ 4.23 Qualifications of appraisers and review appraisers.

(a) The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively.

(b) TRWD will establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications will be consistent with the scope of work for the assignment. TRWD will review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by TRWD to be qualified.

(c) If TRWD uses a contract (fee) appraiser to perform the appraisal, such appraiser must be a state-certified general real estate appraiser licensed as such by the Texas Appraiser Licensing and Certification Board and a Designated Member of Appraisal Institute (MAI) or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. §§ 3331 et seq.).

§ 4.24 Review of appraisals.

(a) A qualified review appraiser (see § 4.23(b)) will examine the presentation and analysis of market information in the appraisal to assure that (for guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.104):

- (1) It meets the definition of appraisal at § 2.01(b);
- (2) It complies with the appraisal requirements found § 4.19(c);
- (3) It complies with all other applicable Federal and State requirements, including, to the extent appropriate, the UASFLA; and
- (4) The appraisal supports the appraiser's opinion of value.

(b) The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser will, prior to acceptance, seek necessary corrections or revisions.

(c) The review appraiser will identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted.

(d) If authorized by TRWD, the staff review appraiser will also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation.

(e) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the TRWD that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 4.19 to support a recommended (or approved) value.

(f) The review appraiser will prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property will be identified in the review appraiser's report. The review appraiser will also prepare a signed certification that states the parameters of the review. The certification will state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition.

(g) The review appraiser and TRWD will sign a review appraiser engagement letter containing these requirements and such other requirements as may be specified by TRWD.

§ 4.25 Acquisition of tenant-owned improvements.

(a) When acquiring any interest in real property, TRWD will offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This includes any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, is considered to be real property for purposes of this Chapter 4.

(c) Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value (defined at § 2.01(x)), whichever is greater.

(d) No payment will be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to TRWD all of the tenant-owner's right, title, and interest 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.

§ 4.26 Expenses incidental to transfer of title to TRWD.

(a) The owner of the real property will be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to TRWD. However, TRWD 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; and

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

(b) Whenever feasible, TRWD will pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from TRWD.

§ 4.27 Litigation expenses.

The owner of the real property will be reimbursed for 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 TRWD cannot acquire the real property by condemnation;

(2) The condemnation proceeding is abandoned by TRWD for reasons 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 TRWD effects a settlement of an inverse condemnation proceeding.

§ 4.28 Donations.

An owner whose real property is being acquired may, after being fully informed by TRWD of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to TRWD as such owner determines. TRWD is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases TRWD from such obligation, except as provided in § 4.06.

Chapter 5: General Relocation Policies

§ 5.01 Applicability.

The requirements of this Chapter 5 apply to the relocation of any displaced person as defined at § 2.01(i). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and these Policies. In extraordinary circumstances, when a displaced person is not readily accessible, TRWD will make a good faith effort to comply with these Policies and document its efforts in writing.

§ 5.02 General information notice.

As soon as feasible, a person scheduled to be displaced will be furnished with a general written description of TRWD's relocation program which does at least the following:

- (1) Informs the person that he or she may be displaced for the Project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
- (2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
- (3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see § 5.04), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
- (4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in §5.16(h); and
- (5) Describes the displaced person's right to appeal TRWD's determination as to a person's application for assistance for which a person may be eligible under these Policies.

§ 5.03 Notice of relocation eligibility.

Eligibility for relocation assistance begins on the date of a notice of intent to acquire (described in § 5.05), the initiation of negotiations (defined in § 2.01(p)), or actual acquisition, whichever occurs first. When this occurs, TRWD will promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

§ 5.04 Ninety-day notice.

(a) No lawful occupant will be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(b) TRWD will issue the notice at least 90 days before it expects the person to be displaced.

(c) The 90-day notice will either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move sooner than 90 days after such a dwelling is made available. (*See* §§ 5.06-5.08)

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

§ 5.05 Notice of intent to acquire.

A notice of intent to acquire is TRWD's written communication that is provided 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, which clearly sets forth that TRWD intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (*See* § 2.01(i)(1)(A))

§ 5.06 Availability of comparable replacement dwelling before displacement.

No person to be displaced will be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 2.01(f)) has been made available to the person. When possible, three or more comparable replacement dwellings will be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

- (1) The person is informed of its location;
- (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

§ 5.07 Waiver of availability of comparable replacement dwelling.

The USACE may grant a waiver of the policy in § 5.06 in any case where it is demonstrated that a person must move because of:

- (1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. § 5122);
- (2) A presidentially declared national emergency; or
- (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

§ 5.08 Basic conditions of emergency move.

Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in § 5.07, TRWD will:

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

§ 5.09 Relocation planning.

During the early stages of development, TRWD will plan acquisitions in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, will precede any action by TRWD which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable;

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, TRWD will consider housing of last resort actions;

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected;

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems; and

(5) Consideration of any special relocation advisory services that may be necessary from TRWD and other cooperating Agencies.

§ 5.10 Loans for planning and preliminary expenses.

TRWD may use the duplicative provision in section 215 of the Uniform Act (42 U.S.C. § 4635), which permits the use of Project funds for loans to cover planning and other preliminary expenses for the development of additional housing. If so, the U.S. Department of Transportation will establish criteria and procedures for such use upon the request of the USACE.

§ 5.11 Relocation assistance advisory services.

(a) TRWD will carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c) of this section.

(b) If TRWD determines that a person occupying property adjacent to the real property acquired for the Project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(c) The relocation assistance advisory program will include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business, farm, and nonprofit organization to be displaced and explain the relocation payments and other assistance for which the business, farm, and nonprofit organization may be

eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This will include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) A determination of the need for outside specialists in accordance with § 6.07 that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty/realty issues. Reasonable effort will be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and TRWD's legal capacity to provide them.

(2) Determine, for residential displacements, 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 will include a personal interview with each residential displaced person. At a minimum, TRWD will:

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 5.06.

(B) As soon as feasible, inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (*see* §§ 7.12 and 7.13) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, inspect housing prior to being made available to assure that it meets applicable standards (*see* §2.01(h)). If such an inspection is not made, TRWD will notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, give minority persons 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 TRWD to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(E) Offer all persons transportation to inspect housing to which they are referred.

(F) Advise any displaced person that may be eligible for government housing assistance at the replacement dwelling of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (*see* § 2.01(f)(9)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(3) For nonresidential moves, provide current and continuing information on the availability, purchase prices, and rental costs of 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 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.

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

§ 5.12 Coordination of relocation activities.

Relocation activities will 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.

§ 5.13 Short-term occupancies.

Any person who occupies property acquired by TRWD, 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 the Project, will be eligible for advisory services, as determined by TRWD.

§ 5.14 Eviction for cause.

(a) An eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in these Policies unless TRWD determines that:

- (1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- (2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- (3) 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 these Policies.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.

(c) This section applies only to persons who would otherwise have been displaced by the Project. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.206)

§ 5.15 Requirements of claims for relocation payments.

(a) Any claim for a relocation payment must 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 will be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) TRWD will review claims in an expeditious manner. The claimant will be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim will be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, TRWD will issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) All claims for a relocation payment must be filed with TRWD no later than 18 months after:

(1) For tenants, the date of displacement.

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

TRWD may waive either time period for good cause.

(e) If TRWD 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 will promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) TRWD will not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and corresponding regulations.

(g) Payments, provided pursuant to these Policies, are not considered to constitute Federal financial assistance. Accordingly, these Policies do not apply to the expenditure of such payments by, or for, a displaced person.

§ 5.16 Aliens not lawfully present in the United States.

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

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

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

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

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

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section must indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning

certification in addition to those contained in this rule will be within the discretion of the USACE and, within those parameters, that of TRWD.

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

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

(e) Any review by TRWD of the certifications provided pursuant to paragraph (a) of this section will be conducted in a nondiscriminatory fashion. TRWD will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, TRWD has reason to believe that a person's certification is invalid, and that, as a result, such person may be an alien not lawfully present in the United States, it will obtain the following information before making a final determination:

(1) If TRWD has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, TRWD will obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. Any request for BCIS verification will include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. If TRWD is unable to contact the BCIS, it may contact the FHWA headquarters, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.

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

(g) No relocation payments or relocation advisory assistance will be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to TRWD's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child

who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

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

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

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

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

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 5.15.

Chapter 6: Payments for Moving and Related Expenses

§ 6.01 In general.

(a) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 2.01(i)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as TRWD determines to be reasonable and necessary.

(b) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under §§ 6.01-6.10 to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 8.03(3), the home-owner occupant 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.

§ 6.02 Moves from a dwelling.

(a) Eligible expenses for moves from a dwelling include the expenses described in §§ 6.07(1)-(7). Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

(b) A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination, of the following methods:

(1) The cost of a commercial move.

(2) The cost of a self-move, as determined by one, or a combination, of the following methods:

(A) The Fixed Residential Moving Cost Schedule described in § 6.11.

(B) The actual cost of the self-move, supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

§ 6.03. Moves from a mobile home.

(a) Eligible expenses for moves from a mobile home include those expenses described in §§ 6.01(1)-(7). Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

(b) In addition to the items in § 6.01, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in §§ 6.07(8)-(10).

(c) A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination, of the following methods:

(1) The cost of a commercial move.

(2) The cost of a self-move, as determined by one, or a combination, of the following methods:

(A) The Fixed Residential Moving Cost Schedule described in § 6.11.

(B) The actual cost of the self-move, supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

§ 6.04 Moves from a business, farm or nonprofit organization.

(a) Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in:

(1) §§ 6.07(1)-(7);

(2) §§ 6.07(11)-(18); and

(3) § 6.12.

(b) Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one, or a combination, of the following methods:

(1) The cost of a commercial move, based on the lower of two bids or estimates prepared by a commercial mover. At TRWD's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) The cost of a self-move, based on one or a combination of the following:

(A) The lower of two bids or estimates prepared by a commercial mover or qualified TRWD staff person. At TRWD's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(B) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

§ 6.05 Personal property only.

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs §§ 6.07(1)-(7) and (18) of this section. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.301(e))

§ 6.06 Advertising signs.

The amount of a payment for direct loss of an advertising sign, which is personal property, will be the lesser of:

- (1) the depreciated reproduction cost of the sign, as determined by TRWD, less the proceeds from its sale; or
- (2) The estimated cost of moving the sign, but with no allowance for storage.

§ 6.07 Eligible actual moving expenses.

The following is an exclusive list of eligible actual moving expenses:

- (1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless TRWD 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. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, 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.
- (4) Storage of the personal property for a period not to exceed 12 months, unless TRWD determines that a longer period is necessary.
- (5) Insurance for the replacement value of the property in connection with the move and necessary storage.
- (6) 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.

(7) Other moving-related expenses that are not listed as ineligible under § 6.08, as TRWD determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility “hookup” charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, 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 if TRWD determines that payment of the fee is necessary to effect relocation.

(11) Any license, permit, fees 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, fees or certification.

(12) Professional services as TRWD determines to be actual, reasonable and necessary for:

(A) Planning the move of the personal property;

(B) Moving the personal property; and

(C) Installing the relocated personal property at the replacement location.

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

(14) 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 lesser of:

(A) The fair market value in place of the item, as is for continued use, 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 TRWD determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value will be based on the cost of the goods to the business, not the potential selling prices; or

(B) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site (for

guidance, *see* 49 C.F.R. Part 24, appendix A, §§ 24.301(g)(14)(i) and (ii)). If the business or farm operation is discontinued, the estimated cost of moving the item will be based on a moving distance of 50 miles.

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) 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:

(A) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(B) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At TRWD's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as TRWD determines to be reasonable, which are incurred in searching for a replacement location, including:

(A) Transportation;

(B) Meals and lodging away from home;

(C) Time spent searching, based on reasonable salary or earnings;

(D) 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 sites;

(E) Time spent in obtaining permits and attending zoning hearings; and

(F) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

(18) Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of TRWD, the allowable moving cost payment will not exceed the lesser of:

(A) The amount which would be received if the property were sold at the site; or

(B) The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by TRWD.

§ 6.08 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this does not preclude the computation under § 7.03(b)(3));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 6.13(b)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before TRWD;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 6.07(3) and 6.13(b);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

§ 6.09 Notification and inspection (nonresidential).

(a) TRWD will inform the displaced person, in writing, of the requirements of this Chapter 6 as soon as possible after the initiation of negotiations. This information may

be included in the relocation information provided the displaced person as set forth in § 5.02.

(b) To be eligible for payments under this Chapter 6 the displaced person must:

(1) Provide TRWD reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, TRWD may waive this notice requirement after documenting its file accordingly; and

(2) Permit TRWD to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

§ 6.10 Transfer of ownership (nonresidential).

Upon request and in accordance with applicable law, the claimant must transfer to TRWD ownership of any personal property that has not been moved, sold, or traded in.

§ 6.11 Fixed payment for moving expenses—residential moves.

(a) Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under §§ 6.01-6.10.

(b) The fixed payment will be determined according to the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

(c) The fixed payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by TRWD at no cost to the person will be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

(d) The Fixed Residential Moving Cost Schedule is available at the following URL: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>

§ 6.12 Related nonresidential eligible expenses.

The following expenses, in addition to those provided by §§ 6.01-6.10 for moving personal property, will be provided if TRWD determines that they are actual, reasonable and necessary:

(1) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(2) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of

such site). At the discretion of TRWD, a reasonable pre-approved hourly rate may be established which reflects comparable rates of other similar professional providers in the area.

(3) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by TRWD.

§ 6.13 Reestablishment expenses—nonresidential moves.

(a) In addition to the payments available under §§ 6.01-6.10 and 6.12, a small business, as defined in § 2.01(z), farm, or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(b) Reestablishment expenses must be reasonable and necessary, as determined by TRWD. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

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

(3) Construction and installation costs for exterior signing to advertise the business.

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

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(A) Lease or rental charges;

(B) Personal or real property taxes;

(C) Insurance premiums; and

(D) Utility charges, excluding impact fees.

(7) Other items that TRWD considers essential to the reestablishment of the business.

(c) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

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

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

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

(4) Payment to a part-time business in the home which does not contribute materially (defined at § 2.01(g)) to the household income.

§ 6.14 Fixed payment for moving expenses—businesses.

(a) A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 6.01-6.10, 6.12 and 6.13. Such fixed payment, except for payment to a nonprofit organization, will equal the average annual net earnings of the business, as computed in accordance with § 6.17, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if TRWD determines that:

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

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

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

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

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement (*see* §2.01(g)).

(b) In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors will 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.

§ 6.15 Fixed payment for moving expenses—farm operations.

A displaced farm operation (defined at § 2.01(1)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with § 6.17, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment will be made only if TRWD determines that:

- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- (2) The partial acquisition caused a substantial change in the nature of the farm operation.

§ 6.16 Fixed payment for moving expenses—nonprofit organizations.

(a) A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if TRWD 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 TRWD demonstrates otherwise.

(b) Any payment under this section in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) years annual gross revenues less administrative expenses. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.305(d))

§ 6.17 Average annual net earnings of a business or farm operation.

(a) 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 two (2) taxable years immediately prior to the taxable year in which it was displaced.

(b) If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings will 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.

(c) If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than \$1,000, the minimum payment of \$1,000 will be provided.

(d) Average annual net earnings may be based upon a different period of time when TRWD determines it to be more equitable.

(e) Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person must furnish TRWD proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which TRWD determines is satisfactory.

§ 6.18 Discretionary utility relocation payments.

(a) Whenever the Project causes the relocation of a utility facility (*see* § 2.01(gg)) and the relocation of the facility creates extraordinary expenses for its owner, TRWD may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the Project;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the Project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by TRWD is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of TRWD, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the Project, less any increase in value of the new facility and salvage value of the old facility. TRWD and the utility facility owner will reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (For guidance, *see* 49 C.F.R. Part 24 appendix A, § 24.306)

Chapter 7: Replacement Housing Payments

Subchapter A—180-day homeowner-occupants

§ 7.01 Eligibility.

(a) A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates:

(A) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(B) The date that TRWD's obligation under § 5.06 is met.

(b) TRWD may extend the one year period under § 7.01(a)(2) for good cause.

§ 7.02 Amount of payment.

(a) The replacement housing payment for an eligible 180-day homeowner-occupant is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. In no event may this payment exceed \$22,500. (*See also* §§ 7.19-.21)

(b) The replacement housing payment for an eligible 180-day homeowner-occupant will be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with § 7.03;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with § 7.04; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with § 7.05.

§ 7.03 Price differential.

(a) The price differential to be paid under § 7.02(b)(1) is the amount which will be added to the acquisition cost of the displacement dwelling and site (*see* § 2.01(k)) to provide a total amount equal to the lesser of:

- (1) The reasonable cost of a comparable replacement dwelling as determined in accordance with §§ 7.12-7.18; or
- (2) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(b) If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling will be the sum of:

- (1) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;
- (2) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 2.01(h)); and
- (3) The current fair market value for residential use of the replacement dwelling site, as determined by any reasonable method, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (4) The retention value of the dwelling, if such retention value is reflected in the “acquisition cost” used when computing the replacement housing payment.

§ 7.04 Increased mortgage interest costs.

(a) TRWD will determine the factors to be used in computing the amount to be paid to a displaced person under § 7.02(b)(2).

(b) The payment for increased mortgage interest cost will 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 will include other debt service costs, if not paid as incidental costs, and will be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Payment is contingent upon a mortgage being placed on the replacement dwelling.

(c) The following factors will apply to the computation of the increased mortgage interest costs payment:

(1) The payment will be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.401(d)) In the case of a home equity loan the unpaid balance will be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment will be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment will not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, will be paid to the extent:

(A) They are not paid as incidental expenses;

(B) They do not exceed rates normal to similar real estate transactions in the area;

(C) TRWD determines them to be necessary; and

(D) The computation of such points and fees will be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person will 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 will be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

§ 7.05 Incidental expenses.

The incidental expenses to be paid under § 7.02(b)(3) or § 7.11 are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

- (2) Lender, FHA, or VA application and appraisal fees.
- (3) Loan origination or assumption fees that do not represent prepaid interest.
- (4) Professional home inspection, certification of structural soundness, and termite inspection.
- (5) Credit report.
- (6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
- (7) Escrow agent's fee.
- (8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
- (9) Such other costs as TRWD determines to be incidental to the purchase.

§ 7.06 Rental assistance payment for 180-day homeowner.

(a) A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under § 7.01 but elects to rent a replacement dwelling, is eligible for a rental assistance payment.

(b) The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with § 7.08, except that the limit of \$5,250 does not apply, and disbursed in accordance with § 7.10.

(c) Under no circumstances may the rental assistance payment exceed the amount that could have been received under § 7.02(b)(1) had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

Subchapter B—90-day homeowner-occupants

§ 7.07 Eligibility.

(a) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with §§ 7.08 and 7.09, or downpayment assistance, as computed in accordance with § 7.11, if such displaced person:

- (1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
- (2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one (1) year after:

(A) For a tenant, the date he or she moves from the displacement dwelling;
or

(B) For an owner-occupant, the later of:

(i) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(ii) The date he or she moves from the displacement dwelling.

(b) TRWD may extend the one-year period under § 7.07(a)(2) for good cause.

§ 7.08 Amount of rental assistance payment.

(a) An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance (*see* §§ 7.19-7.21).

(b) Such rental assistance payment will be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling (as determined by § 7.09) from the lesser of:

(1) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(2) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

§ 7.09 Base monthly rental for displacement dwelling.

(a) The base monthly rental for the displacement dwelling is the lesser of:

(1) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by TRWD. For an owner-occupant, TRWD will use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, TRWD will use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances;

(2) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental will be established solely on the criteria in § 7.09(a)(1) for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time

student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

(3) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(b) The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

§ 7.10 Manner of disbursement.

A rental assistance payment may, at TRWD's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 7.17, 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.

§ 7.11 Downpayment assistance payment.

(a) An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under §§ 7.08-7.10 if the person rented a comparable replacement dwelling.

(b) At TRWD's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner will not exceed the amount the owner would receive under § 7.02 if he or she met the 180-day occupancy requirement. (For guidance, *see* 49 C.F.R. Part 24, appendix A, § 24.402(c))

(c) If TRWD elects to provide the maximum payment of \$5,250 as a downpayment, TRWD will apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally.

(d) A displaced person eligible to receive a payment as a 180-day owner-occupant under § 7.01 is not eligible for this payment.

(e) The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Subchapter C—Additional rules governing replacement housing payments

§ 7.12 Determining cost of comparable replacement dwelling.

(a) The upper limit of a replacement housing payment will be based on the cost of a comparable replacement dwelling as defined at § 2.01(f).

(b) If available, at least three comparable replacement dwellings will 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.

(c) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute will be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(d) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, TRWD may offer to purchase the entire property. If the owner refuses to sell the remainder to TRWD, 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.

(e) To the extent feasible, comparable replacement dwellings will 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.

(f) 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 TRWD, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if TRWD determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(g) TRWD will deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. TRWD will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(h) If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling will be considered the acquisition cost when computing the replacement housing payment.

§ 7.13 Inspection of replacement dwelling.

Before making a replacement housing payment or releasing the initial payment from escrow, TRWD or its designated representative will inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 2.01(h).

§ 7.14 Purchase of replacement dwelling.

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling;
- (2) Purchases and rehabilitates a substandard dwelling;
- (3) Relocates a dwelling which he or she owns or purchases;
- (4) Constructs a dwelling on a site he or she owns or purchases;
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which will be on the basis of current fair market value.

§ 7.15 Occupancy requirements.

No person will be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the USACE, or TRWD; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by TRWD.

§ 7.16 Conversion of payment.

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under §§ 7.08-7.10 is eligible to receive a payment under §§ 7.01-7.06 or § 7.11 if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed will be deducted from the payment computed under §§ 7.01-7.06 or § 7.11.

§ 7.17 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 will 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) Any remaining payment will be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(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 will be disbursed to the estate.

§ 7.18 Insurance proceeds.

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) will be included in the acquisition cost of the displacement dwelling when computing the price differential (*see* § 1.02).

Subchapter D—Replacement housing of last resort

§ 7.19 Determination to provide replacement housing of last resort.

Whenever the 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 this Chapter 7, as appropriate, TRWD will provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(A) The availability of comparable replacement housing in the Project area;

(B) The resources available to provide comparable replacement housing; and

(C) The individual circumstances of the displaced person, or

(2) By a determination that:

(A) There is little, if any, comparable replacement housing available to displaced persons within the entire Project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(B) The Project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(C) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total Project costs.

§ 7.20 Basic rights of persons to be displaced.

(a) Notwithstanding any provision of this subpart, no person will be required to move from a displacement dwelling unless comparable replacement housing is available to such person.

(b) No person may be deprived of any rights the person may have under the Uniform Act or these Policies.

(c) TRWD will not require any displaced person to accept a dwelling provided by TRWD under these procedures (unless TRWD 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.

§ 7.21 Methods of providing comparable replacement housing.

(a) TRWD has broad latitude in implementing this Subchapter D, but implementation will be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for the entire Project.

(b) The methods of providing replacement housing of last resort include, but are not limited to:

(1) A replacement housing payment in excess of the limits set forth in this Chapter 7. A replacement housing payment under this section may be provided in installments or in a lump sum at TRWD's discretion.

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

(3) The construction of a new replacement dwelling.

(4) 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.

(5) The relocation and, if necessary, rehabilitation of a dwelling.

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

(7) The removal of barriers for persons with disabilities.

(c) 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 (for guidance, *see* 49 C.F.R. Part 24 appendix A, § 24.404(c)), 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, will a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 2.01(n).

(d) TRWD will provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under this Chapter 7 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means (*see* § 2.01(f)(8)(C)). Such assistance will cover a period of 42 months.

Chapter 8: Mobile Homes

§ 8.01 Applicability.

This Chapter 8 describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of these Policies. Except as modified by this Chapter 8, such a displaced person is entitled to a moving expense payment in accordance with Chapter 6 and a replacement housing payment in accordance with Chapter 7 to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in §§ 6.07(1)-(10).

§ 8.02 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 TRWD determines that a mobile home located in the remaining part of the property must be moved as a direct result of the Project, the occupant of the mobile home will be considered to be a displaced person who is entitled to relocation payments and other assistance under these Policies.

§ 8.03 Eligibility for replacement housing payments.

An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$22,500, under §§ 7.01-7.06 if:

- (1) The person occupied the mobile home on the displacement site for at least 180 days immediately before:
 - (A) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;
 - (B) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or
 - (C) The date of TRWD's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in § 8.03(3)(A)-(D).
- (2) The person meets the other basic eligibility requirements at § 7.01(a)(2); and
- (3) TRWD acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because TRWD determines that the mobile home:
 - (A) Is not, and cannot economically be made decent, safe, and sanitary;

- (B) Cannot be relocated without substantial damage or unreasonable cost;
- (C) Cannot be relocated because there is no available comparable replacement site; or
- (D) Cannot be relocated because it does not meet mobile home park entrance requirements.

§ 8.04 Replacement housing payment computation.

The replacement housing payment for an eligible displaced 180-day owner is computed as described at § 7.02 incorporating the following, as applicable:

- (1) If TRWD acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.
- (2) If TRWD does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on § 8.03(1)(C), the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of TRWD's selected comparable mobile home less TRWD's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.
- (3) If a comparable replacement mobile home site is not available, the price differential payment will be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

§ 8.05 Rental assistance payment.

If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in §§ 7.08-7.10. This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

§ 8.06 Owner-occupant not displaced from the mobile home.

If TRWD determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at §§ 6.01-6.10 and

any replacement housing payment for the purchase or rental of a comparable site as described in this Chapter 8 or § 8.07 as applicable.

§ 8.07 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250, under §§ 7.07-7.11 if:

- (1) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- (2) The person meets the other basic eligibility requirements at § 7.07; and
- (3) TRWD acquires the mobile home and/or mobile home site, or the mobile home is not acquired by TRWD but TRWD determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 8.03(3).