

Issued in Washington, D.C., on August 24, 1971.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

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[Airspace Docket No. 70-EA-98]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Areas

On June 24, 1971, a notice of proposed rule making was published in the *FEDERAL REGISTER* (36 F.R. 12030), stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation regulations that would alter the Bangor, Maine, and Rockland, Maine, transition areas.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation regulations is amended, effective 0901 G.m.t., November 11, 1971, as hereinafter set forth.

Section 71.181 (36 F.R. 2140, 7302) is amended as follows:

1. In the 1,200-foot floor portion of the Bangor, Maine, transition area the phrase "to lat. 43°44'00" N., long. 69°19'42" W.;" is added between the phrases "lat. 43°48'00" N., long. 69°03'00" W.;" and "to lat. 43°50'00" N., long. 69°18'00" W.;"

2. The Rockland, Maine, transition area is amended to read as follows:

ROCKLAND, MAINE

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Knox County Regional Airport, Rockland, Maine (lat. 44°03'40" N., long. 69°06'05" W.), and within 3.5 miles each side of the 203° bearing from the Rockland RBN, extending from the 7.5-mile radius area to 11.5 miles southwest of the RBN.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510, Executive Order 10854, 24 F.R. 9565; and sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on August 25, 1971.

H. B. HELSTROM,
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Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.642]

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Automatic Revalidation of Nonimmigrant Visas in Certain Cases

Part 41, Chapter I, Title 22 of the Code of Federal Regulations is being amended to provide for permissible absence not exceeding 30 days solely in contiguous territory or adjacent islands other than Cuba when applying for readmission into the United States as a provision for automatic revalidation of nonimmigrant visas in certain circumstances for nonimmigrant aliens reentering the United States from contiguous territory or adjacent islands. Section 41.125 is amended in part to read as follows:

§ 41.125 Revalidation of visas.

(f) *Automatic revalidation of visas in certain cases.* (1) * * * (i) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory or adjacent islands other than Cuba; * * *

(2) * * * (ii) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory;

Effective date. The amendment to the regulations contained in this order shall become effective upon publication in the *FEDERAL REGISTER* (9-1-71).

The provisions of the Administrative Procedure Act (80 Stat. 383; 5 U.S.C. 553) relative to notice of proposed rule making are inapplicable to this order because the regulations contained herein involve foreign affairs functions of the United States.

(Sec. 104, 66 Stat. 174; 5 U.S.C. 1104)

For the Secretary of State.

[SEAL] BARBARA M. WATSON,
Administrator, Bureau of Security and Consular Affairs,
Department of State.

AUGUST 16, 1971.

[FR Doc.71-12777 Filed 8-31-71;8:49 am]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

[Docket No. R-71-141]

PART 4—OPEN-SPACE LAND

Legacy of Parks Program

Title IV of the Housing and Urban Development Act of 1970, Public Law 91-609, 84 Stat. 1770, 1781, amended title VII of the Housing Act of 1961, Public Law 87-70, 75 Stat. 183, 42 U.S.C. 1500 by replacing the Open Space Land Program, Urban Beautification Program, and Historic Preservation Program with a single expanded program of grants for these purposes. This regulation implements the new Act, which is effective July 1, 1971, and sets out requirements and procedures to be used.

Only public bodies are eligible for grants under the program although the matching funds may come from a private source. However, ownership of land acquired with program assistance must remain in the public bodies (§ 4.250). The matching grants from the Federal Government may cover up to 50 percent of project costs (§ 4.209) based on fair market value of the property acquired (§ 4.232), and other eligible projects costs. In addition, the program provides grants to states and local public bodies for up to 75 percent of the cost for acquiring interest in undeveloped or predominantly undeveloped land which has special significance in helping to shape economic and desirable patterns of urban growth (§ 4.202).

In evaluating applications for grants, all the characteristics that make up an urban area, not just population, are to be considered, (§ 4.208) in consonance with the community-wide approach taken by the legislation.

The land acquired may be either developed or undeveloped and acquisition must be completed within 12 months of execution of the grant contract between the Department of Housing and Urban Development (HUD) and the public body (§ 4.228). Acquisition shall be made on the basis of certain terms and conditions specified in § 4.231. Acquisition of structures on the land and the cost of demolition, if necessary, may be included as eligible project costs (§ 4.235). Land encumbered by mortgages may be acquired (§ 4.236).

The issuance of a letter of consent by HUD, in response to an application, marks the date when project costs are eligible for assistance, subject to eventual approval of the grant (§ 4.240). Section 4.239 sets out criteria for eligible development costs.

Section 4.246 details the project selection system used by HUD to determine grant allocations.

The procedures to be followed in applying for grants under this subpart are explained in § 4.247 and the guidelines for carrying out the program itself, once approved, are set forth at § 4.249. Any change in the use of land acquired with assistance under the program from the purpose for which approval was originally given must have the prior approval of the Secretary. Information on various general requirements and restrictions is included at §§ 4.248-4.250, particularly with respect to relocation policies, real estate administrative services, and treatment of donations of land or materials. Payments will be made by HUD only in reimbursement of actual expenditures by the grantee.

The Legacy of Parks Program as set forth in the Housing Act of 1970, Public Law 91-609, 84 Stat. 1770, 1781, will become effective July 1, 1971. The program could not go forward, however, and public bodies could not receive grants under the program until the guidelines were issued. For this reason notice and public procedures are impracticable and contrary to the public interest and good cause exists for making these regulations effective July 1, 1971. The Department will, however, be pleased to accept and consider comments from interested persons and will endeavor to take such comments into account at the earliest time practicable in amendments or additions to these regulations. Three copies of such comments should be filed within 30 days of the date of this publication addressed to the Rules Docket Clerk, Office of the General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Accordingly, 24 CFR Part 4 is amended, as follows:

(a) The present content of Part 4 will be titled "Subpart A—Relocation Payments".

(b) Subpart B is added to read: "Subpart B—The Legacy of Parks Programs".

Subpart B—The Legacy of Parks Program

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- 4.249 Project approval.
- 4.250 Transfers, conversions, interim uses.
- 4.251 Waivers.

AUTHORITY: The provisions of this subpart B issued under title VII of the Housing Act of 1961 (Public Law 87-70, 75 Stat. 183, 42 U.S.C. 1500), as amended, by title IV of the Housing and Urban Development Act of 1970 (Public Law 91-609, 84 Stat. 1781). The provisions of this subpart B are issued under section 7(d) Department of HUD Act, 42 U.S.C. 3535(d). Secretary's delegation of authority published at 36 F.R. 5004, effective March 8, 1971.

Subpart B—The Legacy of Parks Program

§ 4.201 Objectives.

Objectives of the program as set forth in the law include:

To help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local public bodies in taking prompt action to (1) provide, preserve, and develop open-space land in a manner consistent with the planned long-range development of the Nation's urban areas, (2) acquire, improve, and restore areas, sites, and structures of historic or architectural value, (3) develop and improve open space and other public urban land; (encourage the acquisition of interests in undeveloped or predominantly undeveloped land which would have special significance in helping to

shape economic and desirable patterns of urban growth).

§ 4.202 Scope.

The program provides matching grants to States and local public bodies for up to 50 percent of the cost for acquiring title or other interests in and developing open-space land; for acquiring, restoring, or improving sites, structures or areas of historic or architectural significance; and for public environmental improvements which provide long-term benefits in urban areas. In addition, the program provides grants to States and local public bodies for up to 75 percent of the cost for acquiring interest in undeveloped or predominantly undeveloped land which has special significance in helping to shape economic and desirable patterns of urban growth (hereinafter sometimes referred to as "urban shaping" projects).

§ 4.203 The Program and low and moderate income housing.

(a) The Department of Housing and Urban Development (HUD) will encourage use of the program to provide recreation resources and other amenities in and near housing developments for low and moderate income families.

(b) Program projects and sites that include in their service area public or private housing developments for low and moderate income families will be given priority consideration for funds if they will provide open space opportunities within a year to such housing developments and if such housing developments involve 50 or more housing units already existing or planned.

§ 4.204 Coordination with other HUD programs.

HUD supports an integrated approach at local, State, and Federal levels to urban development. To facilitate this approach, extra credit under the project selection system will be given to projects that are undertaken in conjunction with other HUD programs, such as the New Communities Program and Operation Breakthrough.

§ 4.205 Citizen participation.

HUD encourages meaningful participation of citizens in HUD-assisted activities at the local government level.

§ 4.206 Public control and use.

Land acquired under this program must remain under public control in perpetuity (except "urban shaping" projects or conversions meeting standards specified in § 4.250). Areas acquired or assisted under the program must be available to the general public, without discrimination.

§ 4.207 Applicants.

Any State or local public body including any Indian tribe, band, group, and nation of the United States which is legally authorized to undertake a project under the program and to contract with the Federal Government to receive funds for that purpose is eligible for grants.

§ 4.208 Project location criteria.

(a) Authorized projects must be located in an area which is urban in character. This includes those surrounding areas which in the judgment of the Secretary, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of growth, location of transportation facilities and systems and distribution of industrial, commercial, residential, governmental, institutional and other activities.

(b) Where there may be a question of meeting the urban area requirement, determinations as to eligibility will be made by HUD.

§ 4.209 Local share.

The Federal share of a project cannot exceed 50 percent of eligible costs (except for urban shaping projects § 4.202). To secure Federal funding the applicant must show that local funds are available or authorized for the project. Evidence of availability of funds must show that necessary local legislative approvals and authorizations have been given, including authorization for specific project financing when State or local public funds are used. Where any portion of the local share is coming from a source not directly controlled by the applicant, the applicant must show evidence of a binding commitment for the funds, or its intention to provide the entire non-Federal share. Part of the local share may be provided by donated materials or land as provided in § 4.248.

§ 4.210 Planning requirements.

Section 703 of title IV of the Housing Act of 1970, which amended title VII of the Housing Act of 1961, required that grant assistance provided pursuant to this title must be needed for carrying out a unified or officially coordinated program, meeting criteria established by the Secretary, for the provision and development of open-space land as part of the comprehensively planned development of the urban area.

(a) *Planning requirement determinations.* Planning comments must show that the proposed project is part of or consistent with the areawide comprehensive plan and program for the urban area, and must show that the project is part of or consistent with a functional element of that plan.

(b) *Certification.* HUD has initiated a certification procedure for notifying areawide planning organizations and areawide planning jurisdictions when they fulfill HUD planning requirements. The certification process is effective for Areawide Planning Jurisdiction and Organization Certification, Comprehensive Planning Certification, and will also be effective for Functional Planning and Programing Certification on July 1, 1972. This is explained in detail in Circulars MPD 6415.1A, and MPD 6415.3, copies of which are available from the HUD area office.

(c) *Requirements for projects primarily of local significance.* If the project is primarily of local significance

(such as small parks), the project must be in, or consistent with, the local comprehensive plan and evidence must be shown that the project is consistent with the areawide comprehensive planning process.

§ 4.211 Coordination requirements.

(a) *Project notification and review system.* Potential applicants shall comply with the Project Notification and Review System described in Office of Management and Budget Circular No. A-95.

(b) *Review and comment.* (1) Applications and any amendments thereto which involve a major change in a project, must be submitted for review to the HUD recognized Areawide Planning Organization (APO), where the applicant is located. If the applicant is a special purpose unit of local government, such as a recreation commission, the applications must be submitted for review by the units of general local government in the area where the project is to be located, as well as to the APO.

(2) Each application, when submitted to HUD, must be accompanied by the comments and recommendations of the APO and, if through a special purpose unit of local government, the general local government, and a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application.

(c) If the APO has been designated as a metropolitan or regional clearinghouse under Office of Management and Budget Circular A-95, the applicant must satisfy the requirements of that circular.

(d) Projects in or affecting a model neighborhood require execution of the certification in the application form which gives evidence of participation in planning the project by the City Demonstration Agency and its citizen participation structure, as well as any input by the citizen participation structure that local arrangements provide.

(e) Executive Order 11237, July 27, 1965 (30 F.R. 9433), sets forth policies and requirements for coordination of programs of open space acquisition for recreational purposes and is applicable to this program and the outdoor recreation program administered by the Bureau of Outdoor Recreation (BOR), Department of the Interior, under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 460d, 460l. Pursuant to the order, the following requirements apply:

(1) If land proposed to be acquired for recreational purposes under either program is located wholly or partly in an urban area, the acquisition must meet the planning and programing requirements of this program, whether assistance is to be obtained under the Land and Water Conservation Fund Act, 16 U.S.C. 460d, 460l, or this program.

(2) No application shall be filed with HUD under the program for acquisition or development of land included in an application currently under considera-

tion for possible funding by the Bureau of Outdoor Recreation, U.S. Department of the Interior, through the Land and Water Conservation Fund.

(3) Projects with historic significance may be considered for fund assistance from either this program or the Department of the Interior National Park Service Program, "Grants to States for Historic Preservation." However, applicants must elect to apply for assistance under either HUD's or Interior's grant programs and may not apply under both.

§ 4.212 Historic preservation.

For the costs of acquiring, restoring, improving, or moving a structure of historic or architectural significance to be eligible for assistance, such structure, site, or area must be listed on the National Register of Historic Places.

§ 4.213 Relocation policies and requirements.

Projects under the program are subject to all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (36 F.R. 8785-8798). Applicants will be required to submit satisfactory assurances as specified in section 210 of the Act.

§ 4.214 [Reserved]

§ 4.215 Civil rights provisions.

Title VI of the Civil Rights Act of 1968 (Public Law 90-284, 82 Stat. 73), prohibits discrimination on the basis of race, color, or national origin in the use of any facility or improvement of property provided with Federal assistance. When filing for assistance, an applicant must certify his intention to comply with this requirement.

§ 4.216 Equal employment opportunity requirements.

Executive Order 11246, as amended, specifies that Federally assisted construction contractors must take affirmative action to ensure that there is equal employment opportunity without regard to race, color, religion, sex, or national origin. This requirement applies to all contracts under the program involving construction work such as improvements, demolition and site clearance, and restoration. Grantees should secure from a HUD office instructions on procedures and requirements.

§ 4.217 Federal labor standards and contracting requirements.

(a) Construction projects being financed with Federal funds under the program must meet Federal labor standards and prevailing wage requirements, except that work performed by employees of the grant recipient and contracts of less than \$2,000 will be exempt from the Federal labor standards provisions.

(b) The applicant will be required to certify that all bidding documents, contracts, and subcontracts except as exempted above, include the Federal labor standards provisions. The applicant will

be responsible for administering and enforcing these provisions.

(c) HUD Area Offices will provide necessary information on Federal labor standards which require payment of at least minimum wage rates (including fringe benefits) applicable to each classification of laborers and mechanics employed, as determined by the Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a); payment of time and one-half for overtime worked in excess of 8 hours in 1 day or 40 hours in 1 week, as required by the Contract Work Standards Act, 40 U.S.C. 327; payment in full (less deductions made mandatory by law) to all employees engaged in work on the project not less often than once each week; and compliance with applicable regulations issued by the Secretary of Labor in accordance with the provisions of the Copeland 18 U.S.C. 974, and Antikickback Acts 40 U.S.C. 276c.

§ 4.218 Political activity of public body personnel.

Section 12(a) of the Hatch Act, 5 U.S.C. 1501 et seq., applies with respect to officers and employees of the grant recipient whose principal employment is in connection with an activity which is financed in whole or in part by Federal grants made under title VII of the Housing Act of 1961, as amended.

§ 4.219 Continuing maintenance program for assisted projects.

Properties acquired or developed under the program must be satisfactorily maintained. The applicant must certify to an adequate maintenance and operating program for the property for a minimum of 3 years except for historic preservation projects where perpetual maintenance is required.

§ 4.220 Environmental impact statement.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321) establishes new national policy, goals and procedures for protecting and enhancing the environment. For projects specified below, an environmental impact statement will be required with the application:

- (a) All sanitary landfill projects.
- (b) Any project upon which two or more surface areas of water will be impounded.
- (c) Block land acquisitions of 8 acres or more in high density and built-up areas, or of 300 acres elsewhere.
- (d) Projects affecting properties on the National Register of Historic Places (see § 4.225).

The form for this statement is available from the HUD Area Office.

§ 4.221 Land adjacent to school sites.

(a) Where land is being acquired adjacent to a site for a new school, grant assistance will generally be limited to the acquisition of land in excess of the minimum local site standards for new school sites. The minimum local standards will be those explicitly adopted by the school agency; in an instance where no mini-

mum standards have been adopted, a set of recommended standards by the school agency may be accepted.

(b) In every case where land is being acquired or developed adjacent to a school site, the application must include the following:

(1) A statement that the open space being acquired is for general community or neighborhood benefit and use, and will be open to the general public except when its use would conflict with the functions of the adjacent school.

(2) A written cooperation agreement between the school agency and the park/recreation agency indicating that it is their intent to maximize the multiple-use capability of all school open space areas and that the design and operational planning of the respective agencies incorporates this concept.

§ 4.222 Land located in flood plain.

HUD encourages location of projects in flood plains. However, if a proposed project is located within the limits of a flood plain area, the applicant is required to submit certain statements concerning potential hazards, justification and designs for the area (see § 4.260).

§ 4.223 Sanitary landfill treatment.

Property proposed for sanitary landfill treatment can be acquired under the program only when the project meets the following requirements:

- (a) The applicant must provide certifications by appropriate local and State agencies that the landfill operation will not contribute to water or air pollution, or cause a public nuisance; and
- (b) The proposal must provide for readying the land for open space use within 10 years; and
- (c) An "Environmental Impact Statement" must be submitted (see § 4.220).

§ 4.224 Disaster Relief Act of 1970 (P.L. 91-606).

Projects in Presidentially proclaimed major disaster areas will be given priority and immediate consideration for grant assistance.

§ 4.225 Properties on the National Register.

(a) Section 106 of the Historic Preservation Act of 1966 (Public Law 89-655, 80 Stat. 915) requires that all Federal agencies prior to licensing or approving any undertaking, shall take into account the effect of a project on any district, site, building, structure, or object listed on the National Register of Historic Places, maintained by the National Park Service of the U.S. Department of the Interior.

(b) If any proposed project under the program will adversely affect a National Register property, the applicant should bring it to the attention of the HUD Area Office.

§ 4.226 Acquisition and clearance.

(a) For open space or historic preservation purposes. Land to be acquired must be located in an urban area and must be within the area for which the

applicant exercises, or participates in the exercises of, open space responsibilities. Acquired land may be undeveloped, predominantly undeveloped or developed. Acquisition of developed land is permitted only if the local governing body determines that adequate open space cannot effectively be provided through the use of existing undeveloped or predominantly undeveloped land. No size limit is imposed on acquired undeveloped or predominantly undeveloped sites. However, the size of developed land sites will generally be limited to no more than 4 acres.

(b) For urban shaping projects. Land must be undeveloped or predominantly undeveloped. If withheld from commercial, industrial, and residential development, land must have special significance in helping to shape economic and desirable patterns of urban growth outside of existing urban areas which is directly related to the development of new communities or the expansion and revitalization of existing communities.

(c) Impact on project cost. For the purpose of computing the amount of the Federal grant generally no more than the fair market value of the acquired land will be considered. The fair market value (FMV) will be established in accordance with procedures stipulated in § 4.232-4.234. The HUD share of acquisition cost will not exceed 50 percent (or 75 percent in the case of "urban shaping" projects) of the certified FMV regardless of the cost incurred by the applicant, unless the property is acquired by condemnation and the award is determined by a trial on the merits of the issue of value according to law. Any amount paid pursuant to a stipulation of agreement with an owner in excess of the certified FMV acquisition price will not be recognized as a project cost.

§ 4.227 Timing of acquisition.

Project cost will not include the FMV of land acquired prior to HUD authorization to proceed with purchase. Land will be considered acquired as of the date a mutually binding purchase agreement is executed, title to the land is transferred, or condemnation proceeding is initiated which proceeding cannot be withdrawn without penalty, whichever is earliest.

§ 4.228 Completion of acquisition.

Acquisition under an approved project must be completed or condemnation proceedings must be instituted within 12 months of the time the grant contract is executed between HUD and the applicant unless an extension of the time period has been specifically requested and approved in writing by HUD.

§ 4.229 Eligible acquisition costs.

(a) Costs related to acquisition which are eligible for grant assistance include: The cost of required appraisals, title reports, assurances of title, negotiation expenses, cadastral survey of the project boundary, condemnation court costs, attorney's fees for condemnations, and closing purchases, closing costs, interest

paid on condemnation awards, taxes and public service charges allocable to the period after acquisition, as well as permissible or required costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (36 F.R. 8785-8798).

(b) However, attorney's fees of the applicant for necessary legal services will not be considered an eligible project cost if the attorney performing the service is a regular employee of the applicant, or if he or his firm is employed under a lump sum retainer arrangement to perform all services for the applicant.

§ 4.230 Land acquisition policies and requirements.

Projects under the program are subject to all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (36 F.R. 8785-8798). Applicants will be required to submit satisfactory assurances under section 305 of the Act. Details for land acquisition procedures and requirements are available from the HUD Area Office.

§ 4.231 Terms and conditions of acquisition.

Each property shall be acquired on the following basis:

(a) *Title.* Except as indicated in § 4.237, fee simple title shall be acquired subject only to reservations, outstanding interest, encumbrances, and exceptions to title approved by HUD.

(b) *Closing and possession.* To the extent practical, the owner shall be permitted in the agreement of sale to determine the date for closing and delivery of possession.

(c) *Taxes and public charges.* Real property taxes and any charges for public services (such as water, sewerage, and trash collection) shall be prorated as of the date title vests in the applicant or the date of taking possession or under a court order in an eminent domain proceeding or under a voluntary given right of entry and possession, whichever occurs first.

(d) *Rents and deposits.* Rents and deposits collected by a seller from tenants shall be either prorated as of the date of closing or retained by the seller for the rental period in which title is acquired by the applicant. Any deposits or rent prepaid to the seller beyond the end of the current rental period or beyond 1 month after closing, whichever occurs first, shall be paid by the seller to the applicant at closing.

(e) *Closing costs.* The expense of closing, including examination and evidence or assurance of title and preparation and recording instruments of conveyance to the applicant, shall be paid by the applicant as an eligible project cost. But the applicant shall not pay any cost of clearing title.

§ 4.232 Determining fair market value.

In making its determinations of fair market value, the applicant shall take the following actions:

(a) *Appraisals.* Each property shall be appraised independently by two competent professional appraisers selected by the applicant. An additional appraisal is permitted if required by State law, if discrepancies appear in the two appraisals first obtained, or there is presence of trade fixtures in a property.

(b) *Staff review of appraisals.* The appraisals must be reviewed by a competent staff appraiser or a private professional appraiser under contract to the applicant. The review shall require the appraisers to make any corrections in their reports needed to ensure substantial consistency in factual data therein. The reviewer shall determine the acceptability and adequacy of the appraisal reports, including the data and analyses furnished by the appraisers to support their opinions of value. The review shall include an on-site inspection of the property and of the comparable properties considered by the appraisers in deriving their valuations. If the reviewer finds the appraisal reports acceptable and properly documented, he shall determine for each parcel his opinion of the fair market value thereof. The reviewer findings shall be set forth in a written report which shall identify the appraisal reports reviewed and explain the basis for his conclusion as to fair market value.

(c) *Applicant's determination of value.* The applicant shall study its review appraiser's fair market value determinations and his report thereon. With respect to properties for which the governing body of the applicant accepts the reviewer's report and valuations, it shall adopt a resolution which among other things:

- (1) Establishes the fair market value of each property;
- (2) Identifies each property by name of owner, parcel number or other identification;
- (3) Delimits the property and the interest to be acquired therein;
- (4) Certifies as to the work of the appraisers and the review appraiser with respect to each property.

With respect to any properties for which the applicant does not agree with its review appraiser's determinations of fair market value, the applicant shall submit to HUD, for determination of the acquisition price, which may be included in project cost, all appraisal reports on the properties, the reports of the review appraiser, a statement of the determination of fair market value proposed by the applicant and its justification therefor.

(d) *Procedure after determining fair market value.* (1) A certified copy of the resolution of the applicant, which establishes the applicant's determinations of fair market value, shall be sent to HUD promptly after its adoption.

(2) After submitting the resolution to HUD, the applicant shall promptly open negotiations for the acquisition of the

properties involved in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (36 F.R. 8785-8798).

§ 4.233 Property of local government or certain officials.

If a parcel is owned, or was owned at any time after the filing of the application, by another public body, a member of the applicant's governing body, or an officer or employee of the applicant who exercises any responsible function in carrying out the project, the maximum amount that will be recognized for the acquisition of the parcel, whether acquired by purchase or condemnation, will not exceed the lowest of the following:

- (a) The fair market value, as concurred in by HUD.
- (b) The price paid by such owner, if the owner acquired the property after the filing of the application, except by, or as a consequence of, foreclosure of a tax lien.
- (c) The price received by such owner, if sold after the filing of the application.

§ 4.234 Value of public property.

The determination of fair market value for a property owned by a public entity shall not reflect:

- (a) Enhancement or depreciation attributable to the undertaking of the project.
- (b) Enhancement in value from any cause after the first acquisition of privately owned property for the project.

The determination of fair market value shall not exceed the highest satisfactory appraisal, properly adjusted to take the foregoing factors into account and shall be the value of the property for private uses for which the property is suitable or adaptable.

§ 4.235 Acquisition of structures.

(a) Structures located on land being acquired, may be acquired and their acquisition cost included as an eligible project cost, if in the judgment of the HUD area office such acquisition does not change the open space character of the project. Unless infeasible or impractical structures which are not to be demolished should be considered for possible recreation or open space related functions. Eligible costs for refurbishing such structures are discussed in § 4.242.

(b) Where demolition is contemplated and permissible, for each structure the cost of acquisition, demolition, and site clearance, less salvage value, may be included in the project cost. To the extent possible, structures to be demolished and cleared should be small, detrimental, or dilapidated and substandard.

§ 4.236 Mortgage or deed of trust.

Land encumbered by mortgages or deeds of trust may be acquired provided:

- (a) That such an agreement does not extend for a period of time longer than ten (10) years;

(b) That no grant payment will be made until the amount owing on the mortgage or deed of trust note has been reduced to 50 percent of the certified fair market value (FMV) of the acquired property.

§ 4.237 Acquisition of less than fee interest.

Applicant proposals to undertake projects involving acquisition of less than a fee interest in land will be considered by HUD on a case basis. Such exemptions to fee simple title could include the purchase of easements, purchase agreements subject to life-estates, lease-back arrangements or reserved rights, and short- or long-term leases. Specific information on allowable exceptions can be obtained from the HUD Area Office.

§ 4.238 Deed restriction: recordation.

(a) Deeds and other instruments required to vest title of record in the applicant shall be recorded. For each assisted open space site, applicants shall record in the deed or land records of the jurisdiction a restriction which states that the sale, lease, mortgaging, or creation of other indebtedness or other transfer of the site or any interest therein is subject to the prior approval of the Secretary of Housing and Urban Development and for properties listed on the National Register of Historic Places prior approval of the Secretary of HUD and the Secretary of the Interior must be provided for.

(b) Cost of recordation is an eligible project cost.

§ 4.239 Eligible development costs.

Development and clearance activities are eligible under the Program. Such activities must be compatible with the nature of the community's control of the land. If a community controls lands by means of a short-term lease, then assistance will not be provided for expensive and immovable types of development. Projects undertaken as "urban shapers" (75 percent grants for land acquisition cost) may include development (50 percent grant) where the development is compatible with both the immediate and long-term use of the land and where the project is in a defined urban area.

§ 4.240 Timing of development activities.

(a) Development activities begun prior to the issuance of a letter of consent will not be eligible for assistance. Development is considered commenced as of the date the applicant becomes unconditionally bound by a contract or issues a work order covering the activities in question, or actually begins the activities, whichever is earlier.

(b) In combined acquisition and development projects, development must be commenced either within 6 months of the date the land is acquired or the contract for the project is executed, whichever is later. All activities must be completed within 12 months of contract execution.

(c) Where a project involves development only, activities must commence within 6 months of contract execution

and be completed within 12 months of the contract execution date.

(d) HUD will give priority status to applications involving areas where there is a critical need for recreational facilities, and which contemplates immediate development of such facilities.

§ 4.241 Development and restoration planning.

Site design plans, detailed construction drawings, and specifications, and restoration plans, drawings, and specifications are required for all development and restoration projects carried out under the program. Preparation of such plans, drawings, and specifications may be undertaken prior to the submission of an application; however, the cost of such preparation will be eligible as part of project costs only if undertaken after issuance of an authorization to proceed (see § 4.247). Notwithstanding the foregoing restrictions, the reasonable costs of preliminary and general planning necessary to estimate project costs for application or preapplication preparation will be eligible for inclusion in project costs even if incurred prior to issuance of an authorization to proceed.

§ 4.242 Park development.

Plans for developing park and open-space land must insure that the land's character as open space is preserved.

(a) *Structures.* (1) As a general rule, no more than 10 percent of the area of a site may be occupied by structures or buildings not being preserved under historic preservation. However, when the area to be acquired is 2 acres or less, the 10 percent limitation may be waived. Recreation improvements such as game courts or minor structural apparatus such as playground equipment are not included in the 10 percent computation. The applicant must obtain prior HUD approval of any construction which would result in covering more than 10 percent of an open-space site with major structures or buildings, whether or not HUD assistance is required for the proposed development activities.

(2) Applicants planning to use a portion of an assisted site for the location of any building or other structure not clearly related to public recreation and other leisure time activities, must obtain advance permission in writing from HUD.

(b) *Swimming pools.* (1) Pools serving either low-income or high density populations or both will be eligible for grant assistance. To meet the low-income requirement the median family income of the service area of a swimming pool would be \$5,000 or less. HUD will consider waivers for special situations. To meet the high density requirements the pool must be located in an area that is zoned for high density uses, such as high-rise apartments, multiple family dwellings and row houses.

(2) Year-round pool facilities are eligible for assistance under the program. Such assistance may include up to \$100,000 per project in grant funds for the costs of any structure providing weather protection.

(c) *Other development.* Basic activities for making a park site useable or increasing its usefulness may be funded under the program. Such activities include:

(1) *Transportation and circulation.* Roadways, vehicular bridges, and parking areas as well as sidewalks, foot bridges, and paths for walking, hiking, and bicycle riding.

(2) *Landscaping and basic site improvement.* Grading, planting, and seeding. Construction of retaining walls, bulkheads, curbing, fencing, directional signs, site markets, and fixtures necessary for safety measures.

(3) *Utilities.* Installation of basic utilities needed to serve the area, including sanitary sewers, storm sewers, and drainage systems, water lines and water facilities, electric facilities, lighting fixtures, and undergrounding of utility lines.

(4) *Recreational facilities and equipment.* Facilities having long-term usefulness, including playground apparatus, paved game courts, game fields, wading pools, fountains and reflecting pools, equipment for use by particular age groups, such as the elderly, and picnic areas including fireplaces, tables, and shelters.

(5) *Improvement of acquired structures.* Minor refurbishing of structures acquired shall be allowed if the building will be used for recreation purposes. Eligible costs for the restoration of historic structures listed on the National Register, are discussed in § 4.245.

§ 4.243 Environmental improvements.

Activities designed to make public lands more pleasing to the eye, more attractive and compatible with their surrounding area, and more useful to residents may be assisted. Generally, assistance will not be provided for the construction of buildings; however, small structures, such as bus shelters and kiosks may be eligible for assistance if they contribute to the greater use and enjoyment of public lands. Eligible activities under this category are as follows:

(a) *Malls, squares, and plazas.* Construction or installation of fountains, decorative pavement and lighting, planters, street furniture, kiosks, lavatories, sculpture, and similar improvements. Activities in behalf of the arts such as construction of facilities for outdoor exhibits, may also be included, however, the applicant should consult with HUD in cases where the cost of such facilities will be more than nominal.

(b) *Improvement of linking areas of the community.* Community-wide improvement of streets, greenways, parkways, stream valleys, rights-of-ways, and other nonrecreational public places. Eligible activities include tree planting, landscaping design, construction, signs, undergrounding of utilities, and other measures to beautify the area over and above normal maintenance.

(c) *Public buildings and sites.* Installation of landscaping, special fencing, lighting and paving, wall murals, mosaics

and effect lighting. In all cases, the site for which assistance is granted must be available to the general public.

§ 4.244 Underground placement of utility distribution systems.

As used in this subpart, the term, "utility distribution systems," means existing low-voltage overhead electric and telephone utility distribution lines or systems. Underground placement of high voltage distribution systems is not eligible for funding under the program. Underground placement of portions of existing utility distribution systems located on a program assisted site will in no event be funded unless the locality has adopted and is enforcing legal measures to assure that utility distribution systems installed in the future will be placed underground. If the utility company may legally be required to place existing lines underground at its own expense, no part of the cost is eligible for grant assistance. However, if the utility company may not be so required, the net cost of placing a portion of an existing system underground, which portion is located on a program assisted site is eligible for funding. "Net cost" means the cost remaining after the salvage value of transformers and other salvable equipment has been deducted. If capacity is increased at the same time that utilities are placed underground, the cost attributable to increase of capacity is not eligible for assistance.

§ 4.245 Eligible historic preservation activities.

In addition to the activities previously listed under park development and environmental improvements, there are a number of special activities relating to historic preservation which are eligible for funding under the program.

(a) *Acquisition, restoration, and other eligible activities.* (1) Acquisition of properties (see § 4.229).

(2) Restoration of historic sites, areas, and structures to which the applicant has title or other permanent interest appropriate to the proposed project.

(3) Construction and stabilization costs to make historic buildings structurally safe.

(4) Architectural fees and related professional services essential to restoration, including necessary historical research and measured drawings.

(5) If historic structure to be restored is to be used for private purposes, only costs of external restoration and costs of making the structure safe, are eligible.

(6) If historic structure will be open to the public on a regular basis, complete restoration of the interior building components will be eligible. This includes detailed restoration of nonstructural fixtures, and of interior works of art which are an integral part of the structure.

(7) If the structure will be open to the public but complete interior restoration is not planned, program funds may be used for interior construction work to make the building useable. This will include basic interior finish and detailing.

(8) Exploratory engineering or architectural investigation for the purpose of

determining structural integrity, making restoration or rehabilitation cost estimates, or determining whether structure is safe to the public.

(b) *Moving historic structures.* Moving an historic structure will be funded if evidence is presented that the structure faces imminent danger of loss unless moved. The following are eligible moving costs:

(1) Stabilization of structure necessary for transportation.

(2) Transportation of structure.

(3) Rough grading and preparation of new site and provision of suitable foundation.

(4) Public utility disconnections and reconnections as necessary.

(5) Acquisition cost of new site only when there is no suitable publicly owned site.

§ 4.246 Project selection system.

(a) *General.* (1) Project selection is a systematic method of selecting for approval those applications which best meet the national goals of the legislation.

(2) The method of selection relies on information provided in the application; therefore, applicants are urged to refer to the ranking criteria which follows to ensure that pertinent information about each project which might influence its ranking is submitted with the application.

(b) *Ranking of applications and funding decisions.*—(1) *Priority projects.* Those priority projects receiving letters of fund assurance shall be classified as to output classification and be processed for technical compliance and announcement. The following types of high priority activities may receive preapplication fund assurance by submitting a letter of intent:

(i) Requests to develop open space in service areas where existing public open space is under 2.5 acres per thousand population. Project development must take place within 1 year.

(ii) Requests to provide open space opportunities within a year to low- or moderate-income housing developments. These housing developments must involve 50 or more housing units and must be already existing or planned for construction.

(iii) Requests from a State or county to construct recreational facilities within a year on a site accessible to the central city in the already-developed or developing part of a Standard Metropolitan Statistical Area (SMSA). Access might be by public transportation or by some special transit program.

(iv) Requests to develop within 1 year, open space facilities serving low-income citizens in built-up portions of urban areas. Citizen participation in selecting and planning the site should be evidenced and if a model city neighborhood, a favorable statement from the CDA Director should be attached. These priority projects receiving letters of fund assurance shall be classified as to output classification and be processed for technical compliance and announcement.

(2) *Nonpriority projects.* (i) Nonpriority projects shall be classified as to output group and considered for possible funding based on their ability to meet the ranking criteria and within funding constraints of each output group. Once applications in a decision set have been classified into program output groups, they are ranked within each output group by a series of paired comparisons. Under this technique, any two applications are compared with each other on the basis of the criteria for the group. One application is ranked above the other and then a third application is ranked separately with the first two, being compared against them one at a time. This process is repeated for the whole group so that each application has been ranked against all others.

(ii) Once all of the output groups have been ranked, the budget for the decision set is distributed among the output groups by the area office. The top 10 percent of applications not funded will be held for a second analysis in the next decision set; the balance will be returned to the applicant. No application will be ranked in more than two decision sets.

(c) *Project analysis.* The project selection system involves three basic steps: (1) Classification of each site into a "program output group," (2) ranking of sites within each group according to specific criteria established for each group, and (3) decision on funding each program output group within the budget. Sites are classified into one output group that best characterizes the site and its use.

(d) *Program output groups.*—(1) *General.* Projects classified in Groups A, B, and D must be within Standard Metropolitan Statistical Areas (SMSA's). Groups C and F include both SMSA and non-SMSA areas; Group E includes non-SMSA areas only.

(2) *Group A—Encouragement of better urban form; tracts that will demonstrably help guide urban development or redevelopment (urban shaping projects).*—(i) *General considerations.* (a) The key word is "demonstrably." Essentially all public acquisitions of land have some effect on urban development, either present or future. This group is limited to open space proposals involving acquisitions clearly intended as shaping mechanisms. Examples are such elements of guiding growth as preventing the development of flood plains for incompatible uses, separation of land uses, buffers, and reservation of stream valleys.

(b) Classification of proposals into this group must recognize the element of shape and scale for effectiveness. Minor acquisitions whose shaping influence would be limited to the land immediately adjoining would not qualify for this group.

(c) Large acquisition whose effect could not be registered within the next 5-7 years should not be included in this group, even though the site could eventually have long-range shaping influence a decade or more hence.

(ii) *Ranking criteria.* (a) Evidence of techniques other than land acquisition being effectively used to guide urban growth and development, such as ordinances and activities supporting less-than-free preservation of open space, tax incentives, and regulations for planned unit developments.

(b) Degree to which the form and timing of the project can be expected effectively to guide growth or development by preventing sprawl, separating land uses or densities, preventing uneconomical development, etc.

(c) Degree to which the project is geared to the planning process and is specifically related to projected growth.

(d) Imminence of loss to incompatible development.

(e) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(3) *Group B-1—Areas providing needed open space opportunity in low-income neighborhoods.* (i) *General considerations.* (a) Neighborhood or community here means the service area of the specific project—within a 10-minute walk for a lot in a densely build-up area, within the city limits for a city-wide park, and so forth. Sites may range in size from a few thousand square feet to 10 to 20 acres or more.

(b) Median family income in the service area or neighborhood of the project below \$5,000 shall be taken as sufficient evidence to warrant classification in this group. This standard is not inflexible, however. Other cases where the facility is specifically designed to serve the needs of low-income families, and where access to the site is available or will be provided by the community may also fit this Group.

(ii) *Ranking criteria.* All projects in this group are eligible for fund assurance and will not be subject to the project selection system.

(4) *Group B-2—Neighborhood parks.* (i) *General considerations.* (a) This group includes most small parks and recreation areas and includes projects whose primary function is the provision of active outdoor recreation to large numbers of people. It includes organized game areas, tot lots, most small to moderate size city and neighborhood parks (except where any of the aforementioned facilities are in a low-income area, in which case they would be classed as B-1).

(b) Areas over 20 acres would not normally meet this group definition. The existence of smaller areas within a large facility which are intended for intensive development (such as a children's playground in a large regional park) would not qualify the larger area for classification in this group.

(ii) *Ranking criteria.* (a) Degree to which the proposed project will meet the needs of a broad spectrum of the service area population, including its accessibility by walking or public transportation.

(b) Evidence of unmet recreation needs.

(c) Evidence of rapid community growth.

(d) Proximity of the project to the city center.

(e) Evidence of intent to develop the area for immediate use.

(f) Imminence of loss or incompatible development.

(g) Number of people who may benefit from the project relative to the investment.

(h) Evidence site is the last remaining suitable undeveloped land in a neighborhood.

(i) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(5) *Group B-3—General recreation areas.* (i) *General considerations.* This group includes most large city parks, regional parks, and areawide facilities. It includes many areas devoted to hunting, fishing, picnicking, camping, hiking, nature study, ski areas, and most land to be developed for golf courses.

(ii) *Ranking criteria.* (a) Evidence of unmet recreation needs.

(b) Evidence of rapid community growth.

(c) Proximity of the project to the city center, and accessibility by walking or public transportation.

(d) Evidence of intent to develop area for immediate use.

(e) Imminence of loss or incompatible development.

(f) Evidence of priority assigned the project in areawide and local planning and programming.

(g) Number of people who may benefit from the project relative to the investment.

(h) Evidence site is the last remaining suitable undeveloped land in the service area.

(i) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(6) *Group C—Historic sites and structures including non-SMSA.* (i) *General considerations.* (a) This group includes all projects intended primarily to preserve historic sites, structures, buildings, or objects. It also includes the area immediately surrounding the historic site that will be treated as part of the same complex. Large areas having historical buildings will not automatically be classified in this group, unless the primary function of the entire area is to preserve or protect the historic sites.

(b) This group is normally limited to relatively small sites (20 acres or less) at the location of the historic site.

(c) In selecting projects for grant assistance, HUD will give special consideration to those projects which are related to the Department's broad goals and which help support other HUD-assisted activities.

(ii) *Ranking criteria.* The following factors will be considered in evaluating projects for grant assistance:

(a) Potential contribution to the community or area in light of planned use of the property.

(b) Historic or architectural significance of the site, structure, or area.

(c) Evidence of need for Federal assistance.

(d) Imminence of loss, including anticipated construction, use change, deterioration, etc.

(e) Priority of project in any existing State or areawide historic preservation plan.

(f) Potential contribution to the community or area in light of the project's relationship to other HUD goals, including citizen participation and the relationship to programs and projects designed to help meet the Nation's housing goals.

(7) *Group D—Scenic and conservation areas.* (i) *General considerations.* (a) This group is largely devoted to resource-oriented open space projects. Examples of typical areas include a municipal watershed, a nature area, a scenic vista, preservation of wetlands, examples of the natural environment, small forest preserves, ecologic laboratories, general watershed protection areas, wildlife sanctuaries and habitat, and similar areas.

(b) Areas classified in this group may involve some use of the area for outdoor recreation, including hunting, fishing, camping, picnicking, hiking, skiing, nature walks, and so forth.

(ii) *Ranking criteria.* (a) Evidence that the project will meet an urgent local need.

(b) Evidence of priority afforded the project by areawide and local planning and programming.

(c) Evidence of multiple open space uses being served, and if recreation is involved, accessibility of the area by public transportation and intensity of use.

(d) Evidence the project is a key part of an open space plan.

(e) Evidence that less-than-free acquisition will not suffice.

(f) Evidence site is the last remaining suitable for this purpose in a community or neighborhood.

(g) Ecological significance.

(h) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(8) *Group E—Small towns (except historic projects).* (i) *General considerations.* This group includes all open space projects (except historic projects) from applicants outside Standard Metropolitan Statistical Areas. The purpose of this group is to recognize the differences of scale, purpose, size of clientele, and dollar magnitudes more often involved in proposals submitted by smaller communities outside SMSA's. Within the group, a sub-classification should be assigned to place the project in Groups A, B, or D. This sub-grouping is used for identification purposes.

(ii) *Ranking criteria.* (a) Evidence that the project will meet an urgent local need.

(b) Evidence of priority afforded the project by local programming.

(c) Evidence the proposal will have substantial favorable economic impact—e.g. increased tourism.

(d) Evidence of intent to develop area for immediate use.

(e) Evidence of local financial contribution.

(f) Relative number of people who may benefit from the project for the investment required.

(g) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(9) *Group F—Environmental improvements.*—(i) *General considerations.* This group includes community-wide efforts to improve the overall appearance of a community or neighborhood. Particular emphasis is placed on those areas which although not yet blighted to the point of requiring major rehabilitation, are ugly and uninviting—lacking in improvements so important to a sense of community spirit.

(ii) *Ranking criteria.* (a) Evidence that predominant costs of activities included in the application will be allocated for residential or residentially related activities.

(b) Degree to which the form and timing of the project can be expected to effectively help in the overall upgrading of the neighborhood or community and extent to which this program is coordinated with other programs and regulations to improve the quality of the environment.

(c) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(d) Special urgency in the need for grant funds resulting from such factors as rapid increase in population or where the project will benefit low and moderate income persons in an area being developed for new residents, high population density, natural disasters, or an unemployment problem among the disadvantaged or minority group members.

(e) The adequacy of the local capital improvements program as it relates to the development of a continuing environmental improvement effort.

(10) *Special cases.* (i) Malls and plazas are classified as Group A.

(ii) Very large open space systems related to a metropolitan area are classified as Group A.

(iii) Beaches are classified as either Group B-1 or B-2, as appropriate.

(iv) School-park complexes are classified as either Group B-1 or B-2, as appropriate.

§ 4.247 Submission and processing requirements.

(a) *Applications.* Application forms and technical assistance in application preparation are provided by HUD area offices. Preapplication conferences will usually be required for new applicants and may be required for any other applicant at the discretion of the HUD office. Applicants are encouraged to submit a consolidated application covering all program assisted activities planned for 1 year.

(b) *Letters of intent.* Applicants may file a complete program application or a letter expressing intent to submit an application. If the applicant submits a

letter of intent, it must contain enough information to qualify the site(s) proposed for assistance in one of the priority categories listed in § 4.246 and must include the following information:

(1) Name and address of the official applicant agency.

(2) General (neighborhood) location of the site(s) to be acquired and/or developed.

(3) Estimated total project acreage and cost (including acquisition and development).

(4) A commitment to acquire the land and/or complete development within 1 year.

(5) If specific sites are planned, then comments from the Areawide Planning Agency and the A-95 Clearinghouse are needed.

(c) *Letters of assurance.* (1) Upon receipt of a letter of intent, HUD may issue a "letter of assurance" immediately, but in any event HUD will respond to the applicant within 1 week either providing a letter of assurance, or explaining to the applicant why such assurance will not be issued.

(2) The letter of assurance will temporarily set aside the necessary funds, following which the community will have 120 days to complete the necessary actions that can permit formal submission of a complete application. If the applicant has not "taken up" the assurance at the end of the 120-day period, the assurance will be canceled.

(d) *Condemned land.* If a condemnation proceeding has been instituted with respect to any land covered by an application for grant, the application documentation shall identify the parcels for which condemnation proceedings have been instituted and, with respect to those parcels, include the following:

(1) An opinion by the legal counsel for the applicant, establishing the legal authority of the applicant to discontinue the condemnation proceedings at any time prior to judgment without incurring substantial liability or penalty, and

(2) A statement that the applicant complied with HUD land acquisition policy requirements prescribed in § 4.230 and describing the negotiations undertaken to purchase each parcel.

(e) *Flood plain areas.* If a proposed project is located within the limits of a flood plain area, the applicant should contact the HUD Area Office for instructions.

(f) *Processing procedures.* Upon receipt of the application, HUD will assign a project number. A notification will immediately be sent to the applicant acknowledging receipt of the application, giving the assigned project number and indicating that the application has been accepted for processing or if not, why not. If nonremediable defects are noted (such as ineligibility of proposed project), the applicant will be advised that the applicant is rejected for nonremediable reasons. If the application is incomplete, the applicant will be given 30 calendar days to submit the additional material. If requested information is not received within 30 calendar days, the

application may be canceled and returned to the applicant.

(g) *Authorization to proceed.* (1) The program cannot assist land acquisition or project development activities commenced prior to express HUD authorization to proceed.

(2) Property will be considered acquired as of the date a mutually binding purchase agreement is executed, title is transferred, or a condemnation proceedings is initiated which cannot be discontinued without incurring substantial liability or penalty, whichever is earlier.

(3) Development will be considered commenced as of the date the applicant becomes unconditionally bound by a contract or issues a work order covering the activities, or actually begins the activities, whichever is earlier.

(4) The letter acknowledging application receipt is not an authorization to proceed.

(5) HUD authorization to proceed with activities under a pending application in advance of a decision on the application does not insure that the project will later be approved for grant assistance. This authorization is extended to applicants only on an "at your own risk" basis.

§ 4.248 Financial requirements, restrictions, and information.

(a) *Inspection fee.* An inspection fee must be included in the computation of the total cost of any application. The amount of the fee is based on the cost of all eligible activities included in an application and, in any event, will be not less than \$750. The applicant's share of the fee will be collected by deducting it from the initial payment of grant funds under an approved project. Specific advice regarding the inspection fee will be provided by HUD area offices.

(b) *Fee schedule for real estate services.* For projects involving the acquisition of land, the estimated expense of real estate negotiation services, as an eligible administrative cost, may be computed from the maximum allowable fee schedule set forth below:

Land Valuation	Maximum Compensation
Less than \$2,000---	\$25 plus 3 percent of excess above \$500.
\$2,000 to \$5,000----	\$70 plus 2 percent of excess above \$2,000.
\$5,000 to \$10,000---	\$130 plus 1½ percent of excess above \$5,000.
\$10,000 to \$20,000--	\$205 plus 1 percent of excess above \$10,000.
\$20,000 to \$50,000--	\$305 plus ¾ percent of excess above \$20,000.
\$50,000 to \$200,000--	\$505 plus 0.2 percent of excess above \$50,000.
\$200,000 or more----	\$805 plus 0.1 percent of excess above \$200,000.

(c) *Local share.*—(1) *General.* The local share of total project cost may be made up of cash, force account work, or private donations of land, or materials. However, "not more than 50 per centum of the non-Federal share of such eligible project cost may be made up by donations of land or materials" as provided in the Statute (Public Law 91-609, 84 Stat.

1770, 1781). The remainder of the non-Federal share may be made up of force account work.

(2) *Donations.* (1) Gifts, bequests, and endowments of money or land, except anonymous donations, to the applicant are acceptable for up to 50 percent of the applicant's share of project costs, subject to concurrence in advance by HUD.

(ii) If a project is to involve donations of land or material obtain details on eligibility from the HUD area office.

(3) *Force account.* Services provided by the applicant through utilization of its own employees in carrying out development plans and activities may be utilized as part of the non-Federal share of a project.

(d) *Federal share.* Grants under the program will be made only to reimburse the applicant for expenditures made for project activities. Therefore, the applicant must demonstrate capacity to finance project costs prior to receiving assistance.

§ 4.249 Project approval.

Information about HUD's actions and requirements following grant approval will be furnished by the HUD Area Office.

§ 4.250 Transfers, conversions, interim uses.

(a) *General.* Projects receiving assistance are to be utilized as specified in the application and HUD grant contract. Under some conditions, the intended use may be altered if the change is in the interest of the applicant grantee and the Federal Government. Any proposed interim use, incidental change in use of conversion to other uses, however, must have prior approval of HUD. Furthermore, any income realized from interim uses must be deducted from total project cost or officially earmarked for open space purposes.

(b) *Short term transfer of interests—*
(1) *Transfer where there is an incidental change of use.* Transfer of an interest in assisted land is permissible where the resulting change of land use is not inconsistent with the overall approved open space use of the project and prior approval has been obtained from HUD. For example, HUD might approve an underground-powerline easement through a park.

(2) *Transfer of short-term interest contemplated originally.* Transfer of a short term interest in assisted land may be allowed if such transfer is found to be consistent with project purposes and approved as part of the original approved project. For example, HUD might approve a year lease of land to be used for farm purposes if this land is not immediately needed by the grantee for approved purposes. Any such approval will be specifically evidenced in the grant agreement with the grantee. "Short term", as used herein, is defined as not exceeding 3 years from the date of the grant agreement.

(3) *Transfer of a short-term interest not originally approved.* Transfer of a short-term interest not approved as part of the original approved project may be

permitted where the assisted land has not been utilized for its approved use. For example, HUD might approve a 1-year lease for parking purposes of land which was acquired for recreational use but has not been developed. "Short term" is defined for purposes, herein, as not exceeding 3 years from date of approval of the transfer.

(4) *Conditions for approval.* Approval of such transfers will be based upon proposed uses and terms and conditions that HUD deems appropriate, including repayment or reduction of the grant based on the value to the grantee of the transferred interest.

(5) *Documents required for approval.* To obtain approval for a transfer of interest, the applicant should consult the HUD area office.

(c) *Transfers of interest for historic structures.* HUD will permit lease arrangements between an applicant and another entity, which need not be a public body, of a historic or architecturally significant structure if necessary to preserve the structure and use it appropriately. Proposals for such lease arrangements should be included in the application.

(d) *Conversion of land involving historic or architectural properties.* (1) The conversion to other uses of any historically or architecturally significant properties assisted under the program must have prior approval by both the Secretary of HUD and the Secretary of the Interior. Application of this requirement is limited to properties listed on the National Register pursuant to the Historic Preservation Act of 1966 (Public Law 89-665, 80 Stat. 915, 1605C 470).

(2) All such conversions are subject to the requirement of section 106 of such Act and shall be subject to review and comment by the Advisory Council on Historic Preservation. A grantee planning any such conversion should ask the HUD area office for instructions.

(3) All conversions of such properties will require repayment by the applicant of the Federal grant or use of a sum equal to total project cost plus interest for other historic preservation activities.

(e) *Long-term transfer of interest.* (1) Proposals to transfer a long-term interest in project land will be considered by HUD only in unique and exceptional cases. Long term, as used herein means, greater than 3 years. Continued public use, in no way restricted, must be assured in any proposed long-term transfer of interest. The transfer of interest must result in a greater benefit to the community or project service area than the implementing of the originally intended use.

(2) HUD approval, when warranted, of a proposed transfer of a long-term interest will be based upon terms and conditions that HUD deems appropriate, including repayment or reduction of the grant or pending grants based on the value to the grantee of the transferred interest.

(f) *Conversion of land acquired for open space use and land developed with program assistance.* HUD will permit

conversions from open space uses of land assisted under the program (other than historic or architecturally significant properties) when certain standards can be met, as follows:

(1) Other open space must be substituted for that converted so that the process of substitution results in no effective loss of open space in the neighborhood or community. No land already publicly owned may be used for substitution purposes.

(2) The fair market value of the substituted land must be at least equal to the fair market value (at highest and best use) of the project property to be converted, plus any severance damage to any project property to remain in open space use.

(3) The substituted land must be of as nearly as feasible equivalent usefulness and location. In other words, the substitute generally serves the same people and provides equivalent or a better quantity and quality of open space service.

(4) Open space land conversions generally involve change in land use to other public purposes. However, requests for conversions to nonpublic uses will be considered on the basis of community-wide benefit to be derived from conversion.

(5) Conversions that would involve the open market disposal of one site and the subsequent purchase of a new site will require specific justification to demonstrate how the growth or development patterns for the future will not support retention of the original site in public ownership in anticipation of future open space requirements. It is the purpose of this requirement to discourage communities from selling existing open space sites in order to obtain revenues for the purchase of other projects.

(6) Great weight is placed on the relationship of a proposed conversion to the comprehensive plan and its open space and recreation element. Evidence must be submitted supporting the determination that the conversion is needed "for the orderly development and growth of the urban area" and "in accord with the then applicable comprehensive plan." Review and certification by the appropriate planning bodies will be required to meet this condition.

(7) The applicant shall submit a resolution of its governing body authorizing or approving the proposed conversion. HUD may, at its option, require additional evidence regarding the proposed conversion, including evidence that notice of the proposed conversion has been given to the general public by such means as publication in a newspaper of general circulation in the area and/or by public hearings.

(8) Substitute land to be acquired by an applicant for the purpose of meeting HUD conversion requirements, must be acquired and used under terms and policies applicable to the program, including policies for land acquisition, relocation, and nondiscrimination.

(9) No conversions will be approved that would result in an additional Federal grant.

(10) When a superior authority utilizes its eminent domain powers to acquire assisted land, the principles set out above so far as they relate to the substitution of other open space land of at least equal fair market value and of as nearly feasible equivalent usefulness and location will apply. A finding that the use of substituted land will be in accord with the then applicable comprehensive plan must be made and HUD approval for acquisition of the proposed substitute land is required.

(g) *Transfers to another public body.* The applicant may not transfer any of its interest in open space land to another public body unless the proposed transferee enters into a contract with HUD agreeing to be bound by the applicable terms and conditions of the grantee's contract with HUD.

§ 4.251 Waivers.

Any requirement of this subpart may be waived by the Secretary of Housing and Urban Development or as otherwise specifically redelegated so long as such waiver would not violate any requirement of Federal law.

FLOYD H. HYDE,
Assistant Secretary
for Community Development.

[FR Doc. 71-12827 Filed 8-31-71; 8:55 am]

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

[Docket No. R-71-117]

PART 241—SUPPLEMENTARY FINANCING FOR FHA PROJECT MORTGAGES

Eligibility Requirements for Secretary-Held Mortgages

A proposal was published at 36 F.R. 11815 (June 19, 1971) to amend Part 241 of the regulations governing supplementary financing for FHA project mortgages. The proposal was for the purpose of implementing section 111 of the Housing and Urban Development Act of 1970 (84 Stat. 1772), which amended section 241 of the National Housing Act (12 U.S.C. 1715b, 1715z-6) to authorize the Secretary to insure supplemental loans for projects on which he holds the mortgage.

Interested persons were given the opportunity to participate in the rule making through submission of written comments or suggestions on or before July 19, 1971. No comments have been received, and the proposed regulations are therefore adopted without change as set forth below.

Effective date. These regulations are effective September 29, 1971.

EUGENE A. GULLEDGE,
Federal Housing Commissioner.

1. In § 241.1 paragraph (i) is amended, and a new paragraph (j) is added, to read:

§ 241.1 Definitions.

(i) "Borrower" means the owner of a project covered by an insured mortgage or a mortgage held by the Secretary, which owner receives and becomes primarily obligated for the payment of a supplementary loan.

(j) "Secretary" means the Secretary of Housing and Urban Development or his authorized representatives.

2. Section 241.70 is amended to read:

§ 241.70 Maximum loan amount.

(a) Where the project is covered by an insured mortgage, the principal amount of the loan shall not exceed the lesser of the following:

(1) Ninety percent of the Commissioner's estimate of the value of the improvements, additions, or equipment.

(2) An amount which, when added to any outstanding indebtedness relating to the property, does not exceed the maximum mortgage amount insurable under the section or title pursuant to which the mortgage covering such project or facility is insured.

(b) Where the project is covered by a mortgage held by the Secretary, the principal amount of the loan shall be in an amount acceptable to the Secretary.

3. In § 241.100 paragraph (a) (1) (ii) is amended to read:

§ 241.100 Prepayment privilege and charge.

(a) *Prepayment privilege.* (1) . . .
(ii) A provision requiring full prepayment of the loan in the event the insured mortgage or the mortgage held by the Secretary is paid in full prior to maturity, unless the borrower submits to such regulation or restriction as the Commissioner may require.

4. In § 241.110 paragraph (b) is amended to read:

§ 241.110 Certificate of use for transient or hotel purposes.

(b) . . .
(1) In connection with a housing for the elderly project covered by a mortgage insured under the provisions of §§ 231.1 et seq. of this chapter or by a mortgage held by the Secretary.

(2) In connection with a nursing home covered by a mortgage insured under the provisions of §§ 232.1 et seq. of this chapter or by a mortgage held by the Secretary.

(3) In connection with a group practice facility covered by a mortgage insured under the provisions of §§ 1100.1 et seq. of this chapter or by a mortgage held by the Secretary.

5. Section 241.125 is amended to read:

§ 241.125 Use of loan proceeds.

The proceeds of the loan shall be used only to finance improvements or additions to a multifamily project or group practice facility which is subject to a

mortgage insured under any section or title of the Act or covered by a mortgage held by the Secretary. The proceeds of a loan involving a nursing home or a group practice facility may also be used to purchase equipment to be used in the operation of such nursing home or facility.

6. Section 241.145 is amended to read:

§ 241.145 Labor requirements.

All of the labor standards and prevailing wage requirements which were applicable to the insurance of the existing project mortgage, or pursuant to which the original project mortgage was insured, shall also be complied with in connection with the loan insured under this section.

[FR Doc. 71-12736 Filed 8-31-71; 8:45 am]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order 465-71]

PART 21—WITNESS FEES

Travel Expenses of Federal Employees Serving as Witnesses

Correction

In F.R. Doc. 71-11768 appearing at page 15432 in the issue for Saturday, August 14, 1971, in the 18th line of § 21.1(d) the word "approval" should read "approved".

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1911—RULES OF PROCEDURE FOR PROMULGATING, MODIFYING, OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

Pursuant to sections 6(b) and 8(g) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), sections 1 and 4 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35, 38), sections 2 and 4 of the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 351, 353), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) popularly known as the Construction Safety Act, section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and section 5(j)(2) of the National Foundation on Arts and Humanities Act of 1965 (20 U.S.C. 954(j)(2)), Chapter XVII of Title 29, Code of Federal Regulations, is hereby amended by adding thereto a new Part 1911 to read as set forth below.

As the rules are procedural, neither notice of proposed rule making, nor public participation therein, nor delay in effective date is required by 5 U.S.C. 553. In addition, no good reason appears for such public procedure, or delay. However, in any event any interested person is invited to submit written data, views, or arguments with regard to the rules within 60 days of their publication in the FEDERAL REGISTER. Such submissions would be carefully and promptly considered with a possible amendment to the rules in view.

The new Part 1911 reads as follows:

- Sec.
- 1911.1 Purpose and scope.
 - 1911.2 Definitions.
 - 1911.3 Petition for the promulgation, modification, or revocation of a standard.
 - 1911.4 Additional or alternative procedural requirements.

COMMENCEMENT OF RULEMAKING

- 1911.10 Construction standards.
- 1911.11 Other standards.

HEARINGS

- 1911.15 Nature of hearing.
- 1911.16 Powers of presiding officer.
- 1911.17 Certification of the record of a hearing.
- 1911.18 Decision.

AUTHORITY: The provisions of this Part 1911 issued under secs. 6(b), 8(g), 84 Stat. 1593, 1600; 29 U.S.C. 655, 657; secs. 1, 4, 49 Stat. 1036, 1038, as amended; 41 U.S.C. 35, 38; secs. 2, 4, 74 Stat. 1034, 1035; 41 U.S.C. 351, 353; sec. 107, 76 Stat. 357; 40 U.S.C. 333; sec. 41, 44 Stat. 1444; 33 U.S.C. 941; sec. 5(j) (2), 79 Stat. 848; 20 U.S.C. 954(j) (2).

§ 1911.1 Purpose and scope.

This part sets forth rules of procedure for promulgating, modifying, or revoking occupational safety or health standards under section 6(b) (1), (2), (3), and (4) of the Williams-Steiger Occupational Safety and Health Act of 1970 and under any of the particular statutes listed in § 1911.2(d) which may also cover the employments affected by the standards. The purpose of the rules is to provide for single proceedings in the setting of standards under the several statutes, in order to assure uniformity of the standards to be enforced under the several statutes and in order to avoid needless multiplicity of rulemaking proceedings dealing with the same subjects and issues relating to occupational safety and health standards.

§ 1911.2 Definitions.

As used in this part, unless the context clearly requires otherwise—

(a) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(b) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 650).

(c) "Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promul-

gated, modified, or revoked in accordance with section 6(b) (1), (2), (3), and (4) of the Act.

(d) "Particular statute" means any of the following statutes of particular application: the Act of June 30, 1936, commonly known as the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Construction Safety Act (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), or the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.).

§ 1911.3 Petition for the promulgation, modification, or revocation of a standard.

Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

§ 1911.4 Additional or alternative procedural requirements.

Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedural requirements: (a) In order to expedite the conduct of the proceeding; (b) in order to provide greater procedural protection to interested persons whenever it is found necessary or appropriate to do so; or (c) for any other good cause which may be consistent with the applicable laws.

COMMENCEMENT OF RULEMAKING

§ 1911.10 Construction standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary shall consult with the Advisory Committee on Construction Safety and Health, established pursuant to section 107 of the Contract Work Hours and Safety Standards Act, in the formulation of a rule to promulgate, modify, or revoke a standard. The Assistant Secretary shall provide the committee with any proposal of his own or the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days from the date of initial consultation.

(b) Within 60 days after the submission of the committee's recommendations or after the expiration of the period prescribed for such submissions, whichever date is earlier, the Assistant Secretary, if he determines that a rule should be is-

sued, shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. The notice shall include:

- (1) The terms of the proposed rule;
- (2) A reference to section 6(b) of the Act and to section 107 of the Contract Work Hours and Safety Standards Act;
- (3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
- (4) The time and place for an informal hearing to be commenced not earlier than 10 days following the end of the period for written comments;
- (5) A requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the proposed rule and of the evidence to be adduced in support of the position;
- (6) Designation of a presiding officer to conduct the hearing; and
- (7) Any other appropriate provisions pertinent to the proceeding.

(c) Any interested person who files an intention to appear in accordance with paragraph (b) of this section shall have a right to participate at the informal hearing.

§ 1911.11 Other standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments other than those in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary may request the recommendations of an advisory committee appointed under section 7 of the Act. In such event, the Assistant Secretary shall submit to the committee any proposal of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days.

(b) The Assistant Secretary shall publish in the FEDERAL REGISTER a notice of proposed rule making. Where an advisory committee has been consulted and the Assistant Secretary determines that a rule should be issued, the notice shall be published within 60 days after the submission of the committee's recommendations or the expiration of the period prescribed for such submissions, whichever date is earlier. The notice shall include:

- (1) The terms of the proposed rule;
- (2) A reference to section 6(b) of the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule;
- (3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and

arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

(4) Either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file on or before the 30th day after publication of the notice written objections to the proposed rule meeting the requirements of paragraph (c) of this section and request an informal hearing on the objections; and

(5) Any other appropriate provisions with regard to the proceeding.

(c) Objections to be submitted pursuant to paragraph (b) of this section shall comply with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered; and

(5) The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

(d) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (c) of this section, the Assistant Secretary shall, and in any other case may, publish in the FEDERAL REGISTER a notice of informal hearing. The notice shall contain:

(1) A statement of the time, place, and nature of the hearing;

(2) A reference to the authority under which the hearing is to be held;

(3) A specification of the provisions of the proposed rule which have been objected to, and on which an informal hearing has been requested;

(4) A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;

(5) The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;

(6) The designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions with regard to the proceeding.

(e) Any objector requesting a hearing on proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

HEARINGS

§ 1911.15 Nature of hearing.

(a) (1) The legislative history of section 6 indicates that Congress intended informal rather than formal rulemaking procedures to apply. See H. Rept. No. 91-1765, 91st Cong., 2d Sess. 34 (1970). See also S. Rept. No. 91-1282, 91st Cong., 2d Sess. 7 (1970). Thus, the hearing pursuant to § 1911.10 or § 1911.11 shall be informal. However, section 6(b) (3) provides an opportunity for a hearing on objections to proposed rulemaking and section 6(f) provides, in connection with judicial review of standards, that determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole. Although these sections are not read as requiring a rulemaking proceeding within the meaning of the last sentence of 5 U.S.C. 553(c) requiring the application of the formal requirements of 5 U.S.C. 556 and 557, they do suggest a Congressional expectation that the rulemaking would be on the basis of a record to which the substantial evidence test may be applied. Thus, the Act is interpreted as requiring more than the essentials of informal rulemaking under 5 U.S.C. 553 which of themselves do not require a decision on the record.

(2) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

(b) The presiding officer in any oral hearing shall be a hearing examiner appointed under 5 U.S.C. 3105. The hearing shall be reported verbatim, and a transcript shall be made available to any interested person on such terms as the presiding officer may provide.

§ 1911.16 Powers of presiding officer.

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

(a) To regulate the course of the proceedings;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to the issues specified in the notice of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) In his discretion, to permit cross-examination of any witness;

(f) To take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and

(g) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

§ 1911.17 Certification of the record of a hearing.

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

§ 1911.18 Decision.

(a) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Assistant Secretary, upon consideration of the written submissions or of the record of the hearing shall publish in the FEDERAL REGISTER either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule shall not be issued. Any rule or determination shall be accompanied by a statement of findings and conclusions, as well as reasons therefor, upon all material issues of fact, law or discretion presented on the record.

(b) Where an advisory committee has been consulted in the formulation of a proposed rule, the Assistant Secretary may refer written submissions on the rule, or the record of a hearing thereon where available, to the committee for its review and for written recommendations to the Assistant Secretary to be submitted within a period to be prescribed by him.

Signed at Washington, D.C. this 27th day of August 1971.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-12786 Filed 8-31-71; 8:49 am]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER M—MISCELLANEOUS

PART 199—DEFENSE ORGANIZATIONAL ENTITY STANDARDS (DOES) PROGRAM

Codification of Part 199 is discontinued. DoD Directive 5000.17, upon which this Part 199 was based, has been canceled.

MAURICE W. ROCHE,
Director, Correspondence and
Directives Division, OASD
(Administration).

[FR Doc.71-12788 Filed 8-31-71; 8:49 am]