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(iii) *Implementation Time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial Ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in §12a.8(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

(Approved by the Office of Management and Budget under control number 0937-0191)

§ 12a.10 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12.

45 CFR Subtitle A (10-1-20 Edition)

In accordance with 41 CFR 101-47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of §12a.9 of this part and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of Lease Term and Reversion of Title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will

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become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

§ 12a.11 Unsuitable properties.

The landholding agency will defer, for 20 days after the date that notice of a property is published in the FEDERAL REGISTER, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to §12a.4(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ 12a.12 No applications approved.

(a) At the end of the 60 day holding period described in §12a.9(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

PART 13—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

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APPENDIX A TO PART 13

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 48 FR 45252, Oct. 4, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 13.1 Purpose of these rules.

These rules implement section 203 of the Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, for the Department of Health and Human Services. They describe the circumstances under which the Department may award attorney fees and certain other expenses to eligible individuals and entities who prevail over the Department in certain administrative proceedings (called “adversary adjudications”). The Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department’s position in the proceeding was not substantially justified or if the action is one to enforce compliance with a statutory or regulatory requirement and the Department’s demand is substantially in excess of the ultimate decision and is unreasonable when compared with that decision. They also describe what proceedings constitute adversary adjudications covered by the Act, what types of persons and entities may be eligible for an award, and what procedures and standards the Department