

Subpart C—Conditions Applicable to Transfers or Leases

§ 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

- (a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.
- (b) National Historic Preservation Act of 1966, 16 U.S.C. 470.
- (c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*
- (d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).
- (e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).
- (f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*
- (g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*
- (h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*
- (i) Age Discrimination Act of 1975, 42 U.S.C. 1601 *et seq.*
- (j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

§ 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing

construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

- (i) Transfer taxes;
- (ii) Surveys;
- (iii) Appraisals;
- (iv) Inventory costs;
- (v) Legal fees;
- (vi) Title search;
- (vii) Certificate or abstract expenses;
- (viii) Decontamination costs;
- (ix) Moving costs;
- (x) Recordation expenses;
- (xi) Other closing costs; and

(xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

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(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) *Additional terms and conditions for on-site transfers.* The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) *Additional terms and conditions for off-site transfers.* (1) The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

- (i) To post performance bonds;
- (ii) To post performance guarantee deposits; or
- (iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) *Additional terms and conditions for leases.* In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

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§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) *By eligible entities.* A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in §12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

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(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) *By ineligible entities.* A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in §12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

§ 12.14 What are the sanctions for non-compliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) *General sanctions for noncompliance.* The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;