

Subject: DISPOSAL, TRANSFER OR ABANDONMENT/DESTRUCTION OF OWNED OR LEASED
REAL PROPERTY

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24-05-00 DISPOSAL AUTHORITY

- A. Basic Considerations. Article IV, section 3, clause 2, of the United States Constitution provides: "The Congress shall have Power to dispose of . . . Property belonging to the United States." Thus, the disposition of Federal real property or interests therein is dependent upon Congressional authority, which may be express or implied, general or limited to specific property. Real property or interests therein are usually disposed of by or through the General Services Administration (GSA) under section 203 of the Federal Property and Administrative Services Act of 1949 as property surplus to the needs of the Government, after being declared to be excess to the needs of the agency having custody of and accountability for the property. Even real property disposed of by the Department of Health and Human Services (DHHS) for public health purposes must first be assigned by GSA to DHHS for such a disposition.
- B. Both the leasing out of Government real property and the granting of an easement constitute a disposition of an interest in the real property and, hence, can be done only under statutory authority. Until the enactment of Public Law 87-852, the statutory authority to grant right-of-way easements applied only to certain agencies and did not extend to DHHS or its predecessor agencies. On the other hand, the Attorney General of the United States had ruled that executive agencies having custody of and accountability for real property had an inherent right to grant licenses with respect to real property. Such licenses must, however, be revocable at will so that they do not constitute a conveyance of any interest in the real property itself. Certain other short-term uses of DHHS real property are implied under 5 U.S.C. 301 as a part of the implied authority thereunder of DHHS to manage its property. In any event, all actions of that nature with respect to property of the United States are subject to such restrictions as may be imposed by the Congress. The authority of DHHS to dispose of an interest in real property is a very limited one. Examples of such authority are as follows:
- o Section 7 of the "so-called" Indian Health Transfer Act, as amended (42 U.S.C. 2004a). Under that section, the Surgeon General may provide essential sanitation facilities for Indian houses, communities, and lands. He may transfer such facilities to any State or Territory or subdivision or public authority thereof, or to

any Indian tribe, group, band, or community, or, in the case of domestic appurtenances and facilities, to any one or more of the occupants of the Indian homes served thereby.

- o Section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437) (25 U.S.C. 1674) in authorizing the entering into of land leases with Indian tribes, allows the Secretary of DHHS, under an agreement with the Indian tribe, to renovate or reconstruct buildings on land leased from that tribe. Such an action amounts to a grant of the renovated or reconstructed buildings to the Indian tribe, as opposed to the grant of money to the tribe to be used for renovation or reconstruction.
- o Section 322 of the Economy Act of 1932 (40 U.S.C. 278a) stipulates that the lease of premises by the Federal Government may not provide for alteration, improvement, or repair of the leased premises in excess of 25 percent of the first year's rent, which formerly could not exceed 15 percent of the fair market value of the premises. Under section 210(a)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490), the Administrator of General Services may authorize a lease exceeding the 25 percent limitation if the total cost to the Government for the expected life of the lease is less than the cost of alternative space needing no repairs, alterations, or improvements.
- o Section 202(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) authorizes executive agencies to transfer or dispose of excess property in accordance with authority delegated and regulations prescribed by GSA.
- o Section 203(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) authorizes the Administrator of General Services to designate or authorize DHHS to dispose of surplus property by sale, exchange, lease, permit, or transfer.
- o Section 210(a)(13) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490) authorizes the Administrator of General Services to lease, at a fair rental, sites for Federal buildings until needed for construction purposes. Under section 205(d) of that Act, the Administrator may delegate that authority to DHHS.

24-05-10 REPORTING EXCESS REAL PROPERTY

- A. OPDIVs shall report excess real property to the Office of Special Programs Coordination/CAMS in the Office of the Secretary for screening as to other possible Department needs. Reports shall be submitted at least 120 calendar days in advance of the date such property will become available for transfer or disposal.

- B. When buildings or other improvements are excessed without the underlying land, an original only of SF 118 and SF 118A, Report of Excess Real Property, prepared in accordance with GSA instructions in FPMR 101-47.4902, will be submitted to the GSA Regional Office (original and four copies). The Report will include a request, inserted in Block 18, that GSA act as the disposal agency for the property and a statement that "This property has been screened against the known needs of the Department."
- C. Where Government-owned land is involved, the OPDIV will submit an original of SF 118 and schedules A, B, and C, as necessary, including legible copies of documents relating to the Government's title to the land, based on the agency records. Also required is a report which will contain all the information required in FPMR 107-47.202-2, including the legislative jurisdiction, if any, of the United States over the land, together with a citation of the basis of such jurisdiction. The report must also certify that the facilities are in compliance with 40 CFR 761, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." This rule severely restricts the use, handling, storage, and disposal of PCBs.
- D. Reports of excess property for lands which are under the custody and responsibility of the Department and which have been withdrawn or reserved from the public domain will follow the same procedures outlined in paragraph B. above, insofar as the OPDIVs are concerned. Additionally, the OPDIV will file with the Department of the Interior the required notice of intention to relinquish the property, and will mail a copy of the notice to the appropriate GSA Regional Office. The SF 118 will not be completed and processed unless the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines that the land is not suitable for return to the public domain. See FPMR 101-47.202-6.
- E. The following excess real property under the custody and responsibility of the Department is not required to be reported to GSA:
- o Buildings or structures to be dismantled or removed to make way for new construction on the same site, provided the removal is incorporated in the new construction contract.
 - o Buildings or other structures for relocation to a new site where the land underlying the dismantled property is not excess.
- F. Reports of excess property that is subject to transfer under special provisions as described in 24-05-20 will include the information in paragraph B. above, if appropriate, and will also, in the "Remarks" column of the SF 118, cite the law or delegation under which the property is being excessed.

- G. The holding OPDIV will be responsible for the expense of physical care, handling, protection, maintenance, and repair of excess and surplus real property, pending transfer or disposal, for not more than 12 months plus the period to the first day of the succeeding quarter of the fiscal year after the date the property is available for disposition. In the event the property is not transferred to a Federal agency or disposed of during that period, the expense of physical care, handling, protection, maintenance, and repair of such property thereafter will be assumed by GSA. Guidelines for protection and maintenance contained in FPMR 101-47.4913 should be followed. This responsibility will include the minimum services necessary to preserve the Government's interest, and will continue to be exercised until the actual transfer or disposal of the property.

24-05-20 TRANSFER OF EXCESS REAL PROPERTY BETWEEN IHS AND BIA

- A. Background. The basic authority of the Indian Health Service (IHS) stems from the so-called Indian Health Transfer Act, Public Law 83-568 of August 5, 1954, which transferred Indian health functions from the Department of the Interior, Bureau of Indian Affairs (BIA) to the Public Health Service (PHS). Under section 4 of that Act, the properties of BIA relating primarily to health matters were authorized to be transferred to PHS subject to the approval of the then Director of the Bureau of the Budget. If trust properties are involved, the transferee agency assumes the trust obligation with respect to the Indian tribes, as well as other authorities and responsibilities. In recognition of the fact that adjustments would from time to time be called for in the respective real property holdings for the benefit of Indian tribes, and in order to simplify transfer procedures, a Memorandum of Understanding was entered into in 1961 by the Secretary of the Interior, the Secretary of Health, Education, and Welfare, and the Administrator of General Services to cover such transfers as well as retransfers of property between the two Departments involved. See Exhibit 24-05-A. Delegation of Authority No. 396 of May 3, 1961 (26 F.R. 4029) implemented that Memorandum of Understanding by authorizing the two Secretaries "to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any function relating to Indians." Transfers under that Delegation of Authority, which appears in the FPMR's at 41 CFR 101-47.604, do not require any screening of other agencies. It is in effect except to the extent that it has been superseded by section 202(a)(2) of the Federal Property and Administrative Services Act of 1949, which was added by P.L. 93-599, approved January 2, 1975.

The new section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 provides for the transfer, without compensation, of certain excess real property to the Secretary of the Interior to be held in trust status under BIA in favor of the Indian tribes within whose

boundaries such excess property is located or, in Oklahoma, within a former Indian reservation or contiguous to real property now held in trust for an Indian tribe but only if the property itself was once held in trust by the United States for an Indian tribe. No regulations have been issued by GSA regarding the new section 202(a)(2).

- B. Authorities and Guidelines. Section 202(a)(2) of the Federal Property and Administrative Services Act applies only to real property that is not held in trust for an Indian tribe. Transfers thereunder are made for the benefit of Indian tribes. The property so transferred may be used by

Indian tribes themselves or by BIA for administrative purposes for the benefit of Indian tribes. BIA always assumes a trust obligation in favor of Indian tribes for property so transferred. Section 202(a)(2) does not call for any reimbursement of the transferring agency. Property already held by IHS in trust for an Indian tribe is not subject to section 202(a)(2), but may be transferred to BIA pursuant to Delegation of Authority No. 396, or, if outside the Delegation, under excess property procedures. In the absence of GSA regulations specifically applicable to transfers under section 202(a)(2), SF 118 should be used and the applicability of that section demonstrated by indicating:

- o The name of the Indian reservation within which the property is located and the fact that the Indian tribe occupying the reservation is recognized by the BIA; or
- o if the property is within Oklahoma, the fact that it is within the boundaries of a former Indian reservation and was held in trust for an Indian tribe at the time of its acquisition by the United States, or is contiguous to property now held in trust for an Oklahoma Indian tribe and was itself at one time held in trust by the United States for an Indian tribe.

- C. Delegation of Authority No. 396 applies to properties held in trust by IHS for Indian tribes when it desires to transfer the trust to BIA and it also applies to IHS non-trust properties, such as properties acquired by IHS by purchase, and intended to be transferred to and used by BIA for administrative purposes for the benefit of Indian tribes. Such transfers must: (1) comprise a functional unit and be within the United States, (2) have had an acquisition cost of \$100,000 or less, and (3) not be located in an urban area or place under the most recent decennial census.

- D. Transfers of excess property should first be tested to see whether the property is in a status such as to make P.L. 93-599 applicable. If not, the provisions of FPMR 101-47.604 may, if appropriate, be followed. Normal excess property procedures are to be used in those cases that do not meet the conditions of A. and B. above.

24-05-30 ABANDONMENT AND DESTRUCTION

- A. Government-owned improvements located on land for which DHHS has control and accountability may be destroyed after it has been determined that the improvement has no commercial value, or that the estimated cost for continued care, protection, and maintenance would exceed the estimated proceeds of its sale. Improvements owned by the Government may also be abandoned on privately-owned property. See FPMR 101-47.5.
- B. No property shall be abandoned or destroyed until the above facts have been determined by a Board of Survey designated by the head of the office or installation having management responsibility for the property. Any official who is directly accountable or responsible for the property shall not serve in any surveying capacity. The survey should determine the original cost of the property (estimated if not known), the estimated cost to the Government for its protection and maintenance, and whether it is dangerous to public health or safety.
- C. The criteria of health, safety, and security shall be interpreted literally. Buildings and structures which either have structural defects or are contaminated to the extent that it is impracticable to make them safe or sterile for further use are examples of buildings not meeting these criteria. The criteria are also applicable to related materials and equipment which have either been contaminated through use in connection with the treatment or research of infectious and contagious diseases, or have been subjected to radiation, to the extent that it is not practicable to sterilize or neutralize them. The dictates of security policy or regulations require that such property be destroyed when it is no longer of any value or use for the purpose for which it was originally intended.
- D. A Survey Report in the format shown in exhibit 24-05B must be prepared in each instance, initiated by the installation head, signed by the survey board members, and submitted to OPDIV head who serves as the reviewing and certification authority.
- E. The completed Survey Report signed by the OPDIV head must be submitted to GSA for final approval before destruction of the property when the property either (1) had an original cost of more than \$50,000, (2) is of permanent type construction, or (3) would enhance the value of the underlying land, if retained. After GSA approval, the property may be destroyed.
- F. Public notice shall be given in accordance with the instructions in FPMR 101-47.503.