

Subject: MANAGEMENT OF REGIONAL OFFICE SPACE

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24-01-10 PURPOSE

The purpose of this chapter is to provide policy directives and procedures for the acquisition and management of regional office space.

24-01-20 POLICY

- A. The reduction of government space on a nationwide basis is an initiative of the Administration and is mandated by **Executive Orders 12411 (Government Work Space Management Reforms - 3/29/83)** and **12512 (Federal Real Property Management - 4/29/85)**. These Executive Orders direct the General Services Administration (GSA) to provide policy oversight and procedures to guide agencies in managing real property assets.
- B. It is the policy of the Department to support and implement this Presidential initiative through the development of space reduction plans and the practice of good space management in conformance with the applicable Executive Orders and GSA Federal Property Management Regulations **(FPMRs)**.
- C. It is the policy of the Department that the Regional Director is responsible for the acquisition and management Of all regional office space for all regional office components.
- D. It **is** the policy of the Department that provisions of GSA FPMR, Temporary Regulation D-73, be followed **explicitly**. All HHS Regional Offices will individually achieve a maximum space utilization of 135 square feet per work station (excluding GSA approved supplemental space) by the end of **FY 1990**. Effective with the publication of D-73 **(02/11/87)**, all regional office moves or major space renovations **in-place** will meet the D-73 requirement **for** a utilization rate of 135 square feet per work station, including supplemental space.

- E. All Regional Office renovations or moves will emphasize the provision of a quality office environment through the use of systems or modular furniture (as funding allows) **particularly** where space utilization rates will be at the **135** square foot level or less, including supplemental **space**. Furniture buys will be coordinated to the maximum **extent** possible to minimize purchase price through large-scale buying. All systems and modular furniture buys require prior approval of the Office of Procurement and Logistics Policy, Office of the Assistant Secretary for Management and Budget (**ASMB**).
- F. The Regional Director is fully responsible for all Space utilized by all departmental elements in the regional office. The Regional Director has the authority to allocate blocks of space to Staff Divisions and Operating Divisions sized in accordance with this policy and applicable GSA **FPMRs**. Each Staff Division and each Operating Division component must meet the required utilization rate within the imposed time frame independent of each other. Averaging of rates for regional components in order to meet the office-wide goal is not authorized.
- G. The Regional Director will manage the regional office **space** **SO as to** insure maximum cooperative use of space and equipment by all components in the regional office. The Regional Director will insure that all conference rooms in the regional office are managed in such a way as to provide Practical availability for any meeting or conference requirement for any regional office component. No conference room will be allocated for the exclusive use of any regional office component.

24-01-30 APPLICABILITY

The provisions of this directive apply to all regional office components of the Office of the Secretary, all regional office components of the Operating Divisions and any "field offices" of OS components. This policy does not apply to any OPDIV field offices Unless said field office is located in an HHS Regional Office Building.

24-01-40 RESPONSIBILITIES

- A. It shall be the responsibility of the Regional Director to acquire and manage all space in the regional office. It is the Regional Director's responsibility to insure the development and implementation of space management plans that will meet the requirements and space reduction goals of the applicable Executive Orders and GSA **FPMRs**.
- B. Heads of all Regional Staff Divisions and Regional Operating Divisions have the responsibility to support the provisions of this directive and to provide assistance, as requested, to the Regional Director for the implementation of regional space management plans.

24-01-50 PROCEDURES

- A. Work Space Management Plans
 - o Each Regional Director will update the Regional Office Work Space Management Plan in preparation for the annual budget cycle each fiscal year and at other such times as specified by headquarters instructions. Formats will be in accordance with applicable GSA FPMRs supplemented by specific instructions from OS Headquarters. The regional office plan will include each regional Staff Division and each regional Operating Division. This plan will show specific progress toward the goal of reducing and maintaining space to the then current acceptable utilization rate for each Staff Division and Operating Division.
 - o Regional Office Work Space Management and Quality Workplace implementation **and** budget plans **requiring** multi-OPDIV and STAFFDIV funding and action coordination shall be submitted to the ASMB for necessary headquarters funding commitments and coordination. Any conflicts or indecision will be resolved by the ASMB.
- B. Space Allocation for Regional Office Components
 - o Upon the request of the Regional Director or his staff representative, the heads of regional Staff Divisions and Operating Divisions are required to certify the accuracy of the number and type of all personnel who work in regional office "office" space.

- o Additionally, upon request of the Regional Director, the headquarters offices of each STAFFDIV and OPDIV are required to certify (in writing) anticipated regional office personnel counts.
- o Allocation of Office Type Space.

The Regional Director will allocate office space to components based on personnel counts and authorized special work station counts. The sum total of "space allowance units" as specified below determines the overall amount of space "allocated" to each regional office component. (NOTE: A "space allowance unit" will be a maximum of either 135 square feet per workstation plus supplemental, 135 square feet per workstation including supplemental, or 122 square feet per workstation including supplemental, per D-73 definitions.)

- . Authorized full-time permanent slots: one space allowance unit per full-time permanent (**FTP**).
- . Stay-in-school students and/or other ceiling exempt staff: one-half space allowance unit per person.
- . Authorized full-time temporary employees: one space allowance unit per employee.
- . Authorized part-time employees: one space allowance unit for employees with a work week greater than 20 hours but less than 40 hours per week. One-half space allowance unit for those working 20 hours per week or less.
- . All contract employees including physicians under contract to SSA: one-half space allowance unit per employee.
- . Computer work stations: one-half space allowance unit for each terminal or PC centrally located and dedicated for the regular use of multiple employees. The number of computer work stations will not exceed one work station per 4 employees who do not have a terminal **or** PC at their own work station.

The above information is only for determining overall space allocations to regional office components. This is not a directive regarding actual work station size, count or configuration. In accordance with GSA FPMRS, individual work station size is to be determined by the furniture and equipment requirements of the specific task to be performed at that work station.

o Allocation of Ancillary Special Type Space.

The Regional Director may allocate special space for the purposes listed below with GSA approval and with the recognition that most types of special Space cost more per square foot than office space.

- . Special conference room space (meeting FPMR definitions) can be allocated to not exceed one conference room per floor or one conference room Per 150 employees - whichever is less. Regional office components may establish additional meeting areas (without any unique architectural treatment), as necessary, within their office space allocation.
 - . Special training room (meeting FPMR definitions) space can be allocated where a component has a regular training function for the training of Personnel who do not work in the regional office. Utilization of these training rooms must be sufficient to be shown cost-effective over the renting or use of other available training facilities outside the regional office.
 - . Special storage space **can** be utilized where feasible for large **dedicated** filing areas or similar purposes.
 - . Special "library" space can be utilized where feasible for the OGC library requirement (only).
 - . Other special type space can be allocated, if required, in accordance with FPMRS.
- o Any unresolved conflict regarding personnel counts or space allocation will be referred to the ASMB for resolution.

24-01-60 DEFINITIONS

The meaning of words and phrases as used in this chapter pertaining to the space management program can be found in FPMR Temporary Regulation D-73 with the exception of the term "space allowance unit" which is defined and used exclusively in HHS Policy as a basis for determining overall space allocation figures. The term "agency bureau" means any departmental reporting entity for which there is a separate appropriation listed in the President's budget submission.

24-01-70 REPORTING **REQUIREMENTS**

Regional Directors will submit the annual Work Space Management **Plans** in the approved format in accordance with OS Headquarters directives. Normally, OPDIV portions of the plan go **to** OPDIV headquarters elements and OS portions go to OS Headquarters. Interim reports regarding specific space management activities will also be submitted, as requested. Plans and reports directed to OS Headquarters will be submitted to the Deputy Assistant Secretary, Administrative and Management Services/ASMB unless otherwise directed. Plans and reports directed to OPDIV and STAFFDIV headquarters elements will first be coordinated with regional OPDIV and STAFFDIV heads.

Subject: MANAGEMENT OF GENERAL SERVICES ADMINISTRATION ASSIGNED
OFFICE SPACE FOR OPERATING DIVISIONS AND STAFF DIVISIONS

24-02-10	Purpose
20	Policy
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60	Definitions
70	Reporting Requirements.

24-02-10 PURPOSE

The purpose of this chapter is to provide policy directives and procedures for the acquisition and management of General Services Administration (GSA) assigned office space (including ancillary special type space) for Operating Divisions (**OPDIVs**) and Staff Divisions (**STAFFDIVs**).

24-02-20-o POLICY

- A1 The reduction of government space on a nationwide basis is an initiative of the Administration and is mandated by Executive Orders 12411 (Government Work Space Management Reforms - 3/29/83) and 12512 (Federal Real Property Management - 4/29/85). These Executive Orders authorize GSA to **provide policy** oversight and procedures to guide agencies in managing real property assets.
- B. It is the policy of the Department to support and implement this Presidential initiative through the development of space reduction plans and the practice of good space management in conformance with the applicable Executive Orders and GSA Federal Property Management Regulations (**FPMRs**).
- C. It is the policy of the Department that the Head of each OPDIV (except HDS and FSA) is responsible for the acquisition and management of office space for field and headquarters components of that organization, excluding regional office space and space in the southwest Washington complex. Space Management for **HDS** and **FSA** headquarters in the southwest Washington complex is handled by the office of Buildings Management and Telecommunications. Regional space management for **HDS** and **FSA** is the responsibility of the Regional Director of each region. The Regional Director of each region has responsibility for acquisition and management for all regional office space. (See General Administration Manual Chapter 24-01, "Management of Regional Office Space," for details on regional office space management).

- D. It is the policy of the Department that provisions of the GSA FPMR, Temporary Regulation D-73, be followed explicitly. All OPDIV agency bureaus and all STAFFDIVs will individually achieve a maximum space utilization of 135 square feet per work station (excluding GSA approved supplemental space) by the end of FY 1990. Effective with the publication of D-73 (02/11/87), all office moves or major space renovations in-place will meet the D-73 requirement for a utilization rate of 135 square feet per work station, including supplemental space.. ...
- E. OPDIVs (not OS STAFFDIVs) may enter into negotiations with GSA for changes in GSA approved supplemental space factors, to define various types of special work stations, or 'for the purpose of developing special Space Allocation Standards unique to specific types of facilities. Because work **space** management has such a significant and direct impact on OPDIV budgets, OPDIVs must notify the Assistant Secretary for Management and Budget (**ASMB**) that they intend to enter into such negotiations with GSA, must inform the ASMB of progress in said negotiations, and must obtain signature approval of the ASMB on any applicable documentation before seeking GSA signature approval and before using same for space management purposes for OPDIV space.
- F. Emphasis on the use of systems or modular furniture is recommended (as funding allows) for all office renovations or moves, particularly where space utilization rates will be at the 135 square foot level or less, including supplemental space. Furniture buys should be coordinated to the maximum extent possible to minimize purchase price through large-scale buying. All systems and modular furniture buys require prior approval of the Office of Procurement and Logistics Policy, Office of the Assistant Secretary for Management and Budget (**ASMB**).

24-02-30 APPLICABILITY

The provisions of this directive apply to all GSA assigned office space utilized by components of OPDIVs and STAFFDIVs excepting Regional Office Space.

24-02-40 RESPONSIBILITIES

Heads of OPDIVs and STAFFDIVs have the responsibility to acquire and manage **all office** space for their agency bureaus. **It is** his/her responsibility to insure the development and implementation of space management plans that will meet the requirements and space reduction goals of the applicable Executive Orders and GSA FPMRs. Furthermore, Heads of all OPDIVs and STAFFDIVs have the responsibility to support the provisions of this directive.

24-02-50 PROCEDURES

A. Work Space Management Plans

Each OPDIV and STAFFDIV will update the Work Space Management Plan (**WSMP**) for each agency bureau in preparation for the annual budget cycle each fiscal year and at other such times as specified by headquarters instructions.

- Format will be in accordance with applicable GSA **FPMRs** supplemented by specific instructions from OS Headquarters. The summary WSMP for each agency bureau will include plans for each regional office component. **It is** the responsibility of each Regional Director to develop the WSMP for regional OPDIV and STAFFDIV components and to provide copies in a timely fashion to appropriate OPDIV and **STAFFDIV** officials. In a like manner, it is the responsibility of the Director, Office of Buildings Management and Telecommunications (**OBMT/OAMS/ASMB**) to develop and forward the **WSMP** for all OPDIV and STAFFDIV components located in the Southwest Complex, Washington, D. C. OPDIV Work Space Management Plans will be submitted to OS as part of the annual budget call and at such other times as may be requested by the ASMB. All plans will show specific progress toward the goal of reducing and maintaining space to the then current acceptable utilization rate for each agency bureau.

B. Space Allocation

- Heads of OPDIVs and STAFFDIVs are required to certify the accuracy of the number and type of all personnel who require workstations.

o Allocation of Office Type Space.

The responsible OPDIV or STAFFDIV official will allocate office space based on personnel counts and authorized special work station counts. The sum total of "space allowance units" as specified below determines the overall amount of space *allocated" to each **organizational** element (NOTE: A "**space allowance unit**" will be a maximum of either 135 square feet per workstation plus supplemental, 135 square feet per workstation including supplemental, or 122 square feet per workstation including supplemental, per D-73 definitions.)

- . Authorized full-time permanent slots: one space allowance unit per full-time permanent (**FTP**).
- . Stay-in-school students and/or other ceiling exempt staff: one-half space allowance unit per person.
- . Authorized full-time temporary employees: one space allowance unit per employee.
- . Authorized part-time employees: one space allowance unit for employees with a work week greater than 20 hours but less than 40 hours per week. One-half space allowance unit for those working 20 hours per week or less.
- . All contract employees: one-half space allowance unit per employee.
- . Computer work stations: one-half space allowance unit for each terminal or PC centrally located and dedicated for the regular use of multiple employees. The number of computer work **stations** will not exceed one work station per 4 employees who do not have a terminal or PC at their own work station.
- . Other authorized special work stations: As specified in any **HHS** and GSA approved "Space **Allocation Standard**" used for a specific type of facility in lieu of D-73 standards.

The above information is only for determining overall space allocations to organizational components. This is not a directive regarding actual work station size, count or configuration. In accordance with GSA **FPMRs**, individual work station size is to be determined by the furniture and equipment requirements of the specific task to be performed at that work station.

o Allocation of Ancillary Special Type Space.

The responsible OPDIV and STAFFDIV official may **allocate** ancillary special type space as required in accordance with the **FPMRs**. The changing of the designation of office type space to special type space for the purpose of improving the overall office space utilization rate is not authorized. Special type space allocations involve space with unique architectural characteristics designed to meet the needs for conference rooms, training rooms, storage space, library space, etc.

24-02-60 DEFINITIONS

The meaning of words and phrases as used in this chapter pertaining to the space management program can be found in the **FPMR** Temporary Regulation D-73 with the exception of the term "space allowance unit" which is defined and used exclusively in HHS policy as a basis for determining overall space allocation figures. The term "agency bureau" means any-departmental reporting entity for which there is a separate appropriation listed in the President's budget submission.

24-02-70 **REPORTING** REQUIREMENTS

Heads of **OPDIVs** and **STAFFDIVs** will submit the annual Work Space Management Plans in the approved format in accordance with OS Headquarters directives at the time of the annual budget cycle and at such other times as directed. Submissions will include a separate GSA Form 3530, Sections I and II for each agency bureau. Interim reports regarding specific space management activities will also be submitted, as requested.

Subject: **DHHS OWNED AND LEASED REAL PROPERTY**

24-03-00 Purpose and Scope
10 Background
20 Definitions

24-03-00 **PURPOSE AND SCOPE**

- A. This chapter and the following three additional chapters in the General Administration Manual deal with policies regarding real property owned or leased by the United States of America and controlled by the Department of Health and Human Services (DHHS). These will relate to the background and legislative authorities of the Department and the policies controlling the acquisition, **management**, and disposal of **DHHS-owned and -leased** real property.
- B. It is also the intent of this and the succeeding Chapters of this manual to outline the nature of the problems that may be encountered in connection with real property actions and to elucidate the principles to be observed and followed in handling them. The Chapters are not intended to provide a duplication of all of the detailed instructions and operating procedures to be found in other documents. Particular reference should be made to the Federal Property Management Regulations issued by GSA and published in Title 41 CFR Chapter 101, in view of GSA's broad authority and responsibility in the field of real property actions. Note especially that GSA may delegate its authority in this area to DHHS or designate and authorize DHHS to carry out functions for itself under the Federal Property and Administrative Services Act of 1949. (See section 205 at 40 U.S.C. 486.) Moreover, under 31 U.S.C. 1535 (formerly 31 U.S.C. 686, section 601 of the Economy Act of 1932) GSA may by agreement perform certain functions for DHHS. In view of the foregoing, a ready access to the FPMR is a necessity, with the understanding that they are constantly being revised. If questions of legal interpretation arise, the advice of the Office of General Counsel should be obtained.
- C. Policies dealing with real property assigned for Department activities by the General Services Administration (GSA) are contained in GAM chapters 24-01 and 24-02.

24-03-10 **BACKGROUND**

A. **FEDERAL REAL PROPERTY--PUBLIC DOMAIN AND ACQUIRED LANDS**

- 0 The Federal Government owns approximately one-third of the total land area within the 50 States. Aside from land held in trust for Indians or Indian tribes, such land is divided into public domain land and acquired land.

- 0 The term public domain, as it applies to land within a State, refers to those lands which were acquired by the United States prior to the creation of the State and which are still retained by the United States, such as lands acquired by the Federal Government by virtue of the Louisiana Purchase and the Alaska Purchase. The term has no application to any land in the original 13 States, or in Texas, which was independent prior to its admission to the Union, and in a few other States. Much of what was originally public domain is now in private ownership through operation of the homestead laws and other similar laws. Other portions of the public domain have been withdrawn or reserved for military or other public purposes.
- 0 The Federal Government has the inherent power to acquire land, but that power can be exercised only at the discretion of the Congress. Thus, section 3738 of the Revised Statutes (41 U.S.C. 14) provides that land may be purchased for the United States only under a law authorizing such a purchase.
- 0 The distinction between public domain and acquired land has in recent years become blunted. It is nevertheless important to know **the source of a property because lands reserved from the public domain, but no longer needed for a federal use, are offered for return to the public domain.**

B. **TITLE TO FEDERAL REAL PROPERTY**

- 0 With certain minor exceptions, title to all Federal real property is held in the name of the United States of America. The Department of Health and Human Services (DHHS) does not hold title to any real property in its own name. That is so because neither the Department nor any official thereof has the statutory authority to hold title to real property, such as do certain Government corporations and officials of certain agencies in connection with their lending authorities.
- 0 Title to real property acquired by DHHS is taken in the name of the United States of America, and the deed transferring such title is recorded in the appropriate local land records. Transfers of control and accountability to or from other Government agencies are not so recorded because title thereto continues to be vested in the United States of America. Such transfers are usually made administratively through the General Services Administration (GSA).
- 0 There is no general repository of Federal land records for lands owned by the United States, although GSA maintains an inventory based on data submitted by the agencies having control and accountability. This emphasizes the importance of each Federal agency, including DHHS, keeping accurate and complete records of its real properties.

C. DHHS-OWNED AND -LEASED REALTY

- 0 The term "DHHS-owned realty" refers to real property over which DHHS has independent control and accountability; it is wed to distinguish such real property from "GSA-assigned realty," which refers to real property the use of which is administratively assigned to DHHS by GSA, and from "DHHS-leased realty," which refers to real property that is leased directly by DHHS.
- 0 There are a few statutes, such as section 321 of the Public Health Service Act (42 U.S.C. 248), authorizing DHHS to acquire sites and to construct facilities so that it may carry out its functions. Such space, wholly or *predominantly* used for the special purposes of an agency such as DHHS and not generally suitable for the use of other agencies, is referred to as "special purpose" space.
- 0 Other space, primarily space wed for office or storage purposes, is called "general purpose" space. Generally, such space is acquired by GSA and administratively assigned to DHHS. In many instances, the Social Security Administration (SSA) is authorized by appropriations Acts to use its trust funds to pay for the acquisition or construction of general purpose space. Nonetheless, the Comptroller General has ruled that such general purpose property falls within those placed under GSA by the Public Buildings Act of 1959. Therefore, property acquired with SSA trust funds has the unique distinction of being both DHHS-owned and m-assigned realty.
- 0 The acquisition of leasehold interests generally or of leasehold interests in space is usually handled by GSA except in certain instances as under specific delegations of the Administrator's authority to the Secretary of DHHS or as permitted by delegations included in GSA's Federal Property Management Regulations (FPMR). One major exception is provided by section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437), wherein the Secretary of DHHS is authorized to enter into leases with Indian tribes for space to be used for serving Indian health needs. Such leases may be for up to 20 years and may provide for reconstruction or renovation of the leased property pursuant to an agreement with the Indian tribe involved.

D. LEGISLATIVE JURISDICTION

- 0 Article I, section 8, clause 17, of the U.S. Constitution provides that, in certain cases, the Federal Government may acquire the power to exercise "exclusive Legislation" over certain areas within the territorial limits of the several States, principally places to which it has acquired title. In present-day terminology the power of "exclusive Legislation" is called exclusive jurisdiction, and the

areas are called *Federal enclaves*. Within such areas, the Federal Government exercises jurisdiction, or police powers, to the exclusion of all other authorities, State and local. This does not embrace Indian reservations, in which the Federal authority over the Indians is based on other Constitutional provisions, nor does it usually apply to public domain land. Limited forms of legislative jurisdiction are often employed. These forms include "concurrent jurisdiction," wherein both the Federal Government and the State exercise full authority concurrently, and "partial jurisdiction," wherein the jurisdiction is neither wholly concurrent nor wholly exclusive, but the State has reserved to itself certain limited authority, such as the right to tax private property. These forms of limited legislative jurisdiction are usually applied only to States, but have been applied elsewhere such as in the Commonwealth of Puerto Rico. If the Federal Government has acquired no special legislative authority over a property it is said to have only 'a proprietorial interest' therein, but that still carries with it the right to impose criminal sanctions to protect its property and the right to be free of State interference over the exercise of its governmental functions therein.

- 0 Prior to February 1, 1940, the Federal Government is presumed to have accepted such legislative jurisdiction over particular areas as the States offered, and that presumption applies to the great bulk of all acquired lands. In a few cases such jurisdiction extends to public domain lands.
- 0 For acquisitions on or after February 1, 1940, no special jurisdiction may be acquired unless the head of the agency first accepts in writing such jurisdiction as the State offers. Once the Federal Government has accepted jurisdiction from the State, it cannot, as a rule, relinquish any portion of it without statutory authority to do so.
- 0 Legislative jurisdiction, like title, is vested in the United States of America. Consequently, properties transferred to DHHS from another agency, such as a military department, continue to be held under the same legislative jurisdiction as that previously made applicable to it unless the jurisdiction ceded is contingent upon the continued use of the property for a specified purpose that has ceased to prevail.
- 0 The decision to accept or not accept legislative jurisdiction rests with the Secretary. In recent times, jurisdiction has been accepted only in certain special cases. For example, jurisdiction may be accepted for an addition to an existing installation in order to secure as much uniformity as possible over the whole of the installation. Federal jurisdiction may be desirable because it

enables Federal officials to enforce as Federal crimes certain major offenses adopted for Federal enclaves by the Assimilative Crimes Act (18 U.S.C. 131 without reliance solely on State enforcement of State criminal laws, although concurrent jurisdiction is often more desirable because it provides alternative means of enforcement for criminal offenses. Federal jurisdiction may also be desirable because it enables the Federal Government, under 40 U.S.C. 318, to proscribe certain minor offenses, particularly traffic offenses, not made applicable by State law. On the other hand, exclusive jurisdiction would be undesirable if its exercise were to deprive residents of the area of certain civil rights and privileges provided by State Governments. That objection, however, has been largely surmounted over the years by State legislation and by judicial interpretation in matters like voting privileges and access to State courts, in particular divorce and probate proceedings, which are not usually provided for by Federal law.

- 0 All actions to acquire, modify, or relinquish legislative jurisdiction should be undertaken only in consultation with the Office of Special Programs Coordination/Office of Administrative and Management Services, (OSPC/OAMS.) In every case, OSPC/OAMS will secure the advice of the Office of General Counsel.

24-03-20 DEFINITIONS

For the purposes of these four General Administrative Manual Chapters the terms used herein shall have the following meanings:

Disposal Agency. The executive agency designated by the Administrator of General Services to dispose of surplus real property.

Easement. An interest in land granted for a specified purpose, such as highway, utility line, etc.

Executive Agency. Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

Federal Agency. Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

Holding Agency. The executive agency which has accountability for the property involved.

License. The right to use Federal property for private purposes, revocable at the will of the grantor. It does not convey an interest in the property.

Operating Divisions (OPDIVs). Operating Divisions, i.e., the Public Health Service, Health Care Financing Administration, Office of Human Development Services, Social Security Administration, and Family Support Administration.

Permit. The right of one Government agency to use the property of another agency on a temporary basis. It does not transfer control of the property, but only its temporary use.

Real Property. Any interest in land, together with the improvements, structures, and fixtures located thereon, under control of any Federal agency, except the public domain, or lands reserved or dedicated for national forest or national park purposes.

Right of Entry enter the property of another for the purpose of making repairs: preparing the property for use pending acquisition, or other temporary purposes.

Right of Reentry. An action which occurs because of a condition broken which terminates the grantee's interest in the land.

AMS. Office of Administrative and Management Services

OSPC. Office of Special Programs Coordination

Subject : ACQUISITION OF OWNED OR LEASED REAL PROPERTY

- 24-04-00 Authority of DHHS to Acquire Real Property
 - 10 Methods of Acquiring Real Property
 - 20 Lease of Space by DHHS
 - 30 Factors Governing Acquisition of Real Property
 - 40 DHHS Use of Other Federal Agency Space

24-04-00 AUTHORITY OF DHHS TO ACQUIRE REAL PROPERTY

- A. As noted in 24-03-10A, the Federal Government has the inherent power to acquire land. However, section 3736 of the Revised Statutes (41 U.S.C. 14) provides that land may be purchased for the United States only under a law authorizing such a purchase. Section 3733 of the Revised Statutes (41 U.S.C. 12) prohibits entering into any contract for the erection, repair, or furnishing of any public building which binds the Government to pay a larger sum than the amount specifically appropriated for the particular purpose. The Office of General Counsel should be involved in any acquisition of real property by the Department for the United States.
- B. The principal statutes authorizing the Department of Health and Human Services (DHHS) to acquire land and to provide space are the following:
 - o Section 304(b)(4) of the Public Health Service Act (42 U.S.C. 242b) authorizes the Secretary of DHHS to acquire, construct, improve, repair, operate, and maintain laboratory, research and other necessary facilities and equipment, and such other real or personal property as the Secretary deems necessary for health statistical activities and health services research, evaluation, and demonstrations.
 - o Section 321 of the Public Health Service Act (42 U.S.C. 248) authorizes the Secretary, with the approval of the Resident, to select sites for and to establish such institutions, hospitals, and stations as are necessary to enable the Public Health Service (PHS) to discharge its functions and duties. The Resident's authority to approve facilities has been delegated by him to the Director of the Office of Management and Budget (OMB).
 - o Section 404(b)(2) of the public Health Service Act (42 U.S.C. 285(b)(2)) authorizes the Director of the National Cancer Institute (after consultation with the National Cancer Advisory Board) to acquire such real property and facilities and equipment as the Director deems necessary.

- o Section 413(a) of the Public Health Service Act (42 U.S.C. 287b) authorizes the Director of the **National Heart, Lung, and Blood Institute (after consultation With the National Heart and Lung Advisory Council)** to acquire such real property as may be necessary.
 - o Section 386 of the Public Health Service Act(42U.S.C.280) authorizes the **Administrator of General Services** to *acquire suitable* sites, selected by the Secretary of **DHHS** in accordance with the direction⁶ of the Board of Regents of the National Library of **Medicine**, and to erect **thereon**, furnish, and equip suitable and **adequate** buildings and facilities for the National Library of **Medicine**. It also **authorizes** appropriation⁶ for the erection and **equipment** of buildings and facilities for the use of the Library.
 - o Section 7 of Public Law 83-568 (known as the Indian Health Transfer Act) as amended (42 U.S.C. 2004a), authorizes the **construction, improvement, or extension of sanitary facilities to serve Indians and the acquisition of lands, or rights or interests therein**, including sites, rights-of-way, and easements for #at purpose.
 - o Section 201(g) of the Social Security Act (42 U.S.C. 401(g)) authorizes the several trust **funds** to be made available in amounts authorized by **Congress** for **certain** costs of the administration of the social Security Act. Various **appropriations Acts** have authorized the **construction** of facilities, including the **acquisition** of sites, for the Social Security **Administration(SSA)**.
- C. Various statutes authorize the acceptance of gift⁶ of real property (usually unconditional but **sometimes conditional**) by or on behalf of **DHHS**. Gifts are **unconditional** unless the applicable **statute** provides otherwise.
- o Section 501 of the Public Health Service Act(42 U.S.C.219) authorize⁶ the Secretary of **DHHS** to accept unconditional gift⁶ or, if **recommended** by the Surgeon General, conditional gifts of **real property** for the benefit of the Public Health Service.
 - o Section 384 of the Public Health Service Act (42 U.S.C. 278) extends the authority under section 501, above, to the acceptance and **administration** of gifts of real property for the benefit of the National Library **of** Medicine.
 - o Section 409 of the Public Health Service Act (42 U.S.C. 286d) authorizes the Director of the National Cancer Institute (after **consultation** with the National Cancer Advisory Board) to accept unconditional gift⁶ of real property, among other **things**.

- o Section 423 of the Public Health Service Act (42 U.S.C. 288b) authorizes the Surgeon General to **recommend** to the Secretary of DHHS the acceptance of **conditional** gifts, pursuant to section 501, for the National Institute of Dental Research.
- o Section 22 of the Occupational Safety and Health Act (29 U.S.C. 671) authorizes the Director of the National Institute of Occupational Safety and Health (NIOSH) to accept property, including real property, donated, bequeathed or devised without condition other than that it be **used** for the purposes of the Institute.

24-04-10 METHODS OF ACQUIRING REAL PROPERTY

- A. Purchase. This **is** the usual way of acquiring real property. This method **can**, however, no longer be used to acquire real property at a bargain price. Under Title III of the Uniform Relocation **Assistance and Real Property Acquisition Policies Act** of 1970 (P.L. 91-646 as amended), DHHS is required to make every reasonable **effort** to acquire real property expeditiously **by** negotiation. That Act also calls for the making of an offer to pay the owner not less than DHHS' approved appraisal of the fair market value of the property. **Moreover, the owner is to be given an opportunity** to accompany the appraiser **on his/her** inspection of the property and is to be given a written statement of, and **summary** of the basis for, the **amount** established as just compensation. Under section 355 of the Revised Statutes (40 U.S.C. 255), which was based upon an earlier statute enacted in 1841, no public money may be expended on the improvement of a site without a title approval by the Attorney General and, prior to February 1, 1940, the consent to the purchase by the legislature of the State in which the site is located. The consent requirement no longer prevails, but the title approval requirement **is still in** effect. The process of approving title has been vastly developed over the years, and the authority to make such an approval has been delegated to many agencies, but not to DHHS, which acquires only a relatively **small** amount of real property. The approval of title by the Attorney General calls for the submission by the acquiring agency of title evidence that **conforms** to Standards for the Preparation of Title Evidence in Land **Acquisitions** by the United States, issued by the Department of Justice. This often involves the procurement of a Policy of Title Insurance issued by a title company that has **been** approved specifically by the Department of Justice, together with a Certificate of Inspection and Possession by the acquiring agency? all as outlined in those standards.
- B. Eminent Domain. The power of the Federal Government to acquire land by eminent domain, **i.e.**, by condemnation, was not fully settled by the U.S. Supreme Court until 1876. Condemnation can be exercised in the Federal Courts without the consent of the State, and this power extends even to property used by the State for its governmental purposes. Condemnation is

usually initiated by GSA on behalf of DHHS, and the proceedings are conducted in a Federal Court by the Department of Justice. The Department of Justice requires the procuring agency to produce the evidence of title and related papers. The judicial proceedings and court decree eliminate any need for a separate opinion of title by the Attorney General. If title is needed immediately without waiting for the termination of lengthy court proceedings on the value of the property, this can be done by the filing of a "declaration of taking" and a deposit into the court of the estimated amount of the just compensation for the land taken. The court may fix the time within which and the terms upon which possession shall pass to DHHS. The Office of General Counsel should be the point of contact for the Department with the Department of Justice for acquisition of real property by purchase or through the power of "eminent domain".

C. Withdrawal from the Public Domain. Much of the original public domain has, in the past, been withdrawn and set aside for specific public uses by the President and later by the Secretary of the Interior under a delegation from the President. It is no longer a viable source of land for DHHS, and further withdrawal requires an Act of Congress.

D. Transfers from other Departments. Property that is excess to the needs of a constituent agency of DHHS may be transferred administratively to another constituent agency of DHHS. Property that is excess to the needs of another department or agency may be transferred to DHHS with the approval of GSA through the excess property procedure authorized under section 202(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483). For details see GSA's Federal Property Management Regulation (FPMR). This does not preclude the temporary permitting of real property to DHHS by the agency having control and accountability.

0 The so-called Indian Health Transfer Act (P.L. 83-568) transferring Indian health functions from the Bureau of Indian Affairs (BIA) to the Public Health Service provided for the transfer of properties relating primarily to health matters (42 U.S.C. 2001). Continuing adjustments in property holdings between the two agencies are made under a Memorandum of Understanding approved by the Administrator of General Services on May 3, 1961 and Delegation of Authority number 396 of May 3, 1961 (26 F.R. 4029) pursuant to the Federal Property and Administrative Services Act of 1949.

E. Gifts or Donation of Real Property. A gift of real property to DHHS is not effective until accepted. The Attorney General has ruled (39 Ops. Atty. Gen. 373 (1939)) that there must be general authority for the acquisition of land for the purpose in question before a gift of land may be accepted. Statutory authority to accept gifts is preferred. Some of the statutory authorities authorize the acceptance of conditional gifts; all are subject to certain review requirements, reflecting the fact that some proposed gift deed conditions would commit DHHS to a course of action

that may later turn out to be undesirable. Finally, before any gift of land is accepted on behalf of the United States, an opinion of the Attorney General in favor of the validity of the title to the land should be obtained as provided for in section 355 of the Revised Statutes (40 U.S.C. 255).

24-04-20 LEASE OF SPACE BY DHHS

- A. The lease of space for DHHS is primarily done by GSA. For the most part, DHHS does not have the authority to lease for long periods. That is so because, without express authority in that regard, an agency cannot commit future appropriations, and leases are charged to the then current fiscal year of the lease rather than to the year of entering into the lease commitment. Thus, authority to enter into a 20-year lease, such as GSA has under 40 U.S.C. 490(h) is in effect an authority to commit future appropriations. Without that authority, a multi-year lease can only be regarded as a lease for the current year with successive options to renew the lease for one-year periods. Moreover, a March 3, 1877 statute (40 U.S.C. 34) provides that no building, or part of a building, may be rented in the District of Columbia until an appropriation therefor shall have been made in terms by Congress..
- B. Section 304(b)(4) of the Public Health Service Act (42 U.S.C. 242b) authorizes the Secretary of DHHS to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or adjacent communities for health statistical activities and health services research, evaluations, and demonstrations.
- C. Section 404(b)(2) of the Public Health Service Act (42 U.S.C. 285d(b)(2)) authorizes the Director of the National Cancer Institute to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Cancer Institute for a period not to exceed ten years.
- D. Section 413(c)(2) of the Public Health Service Act (42 U.S.C. 287b(c)(2)) authorizes the Director of the National Heart, Lung, and Blood Institute to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years.

- E. Section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437) (25 U.S.C. 1674) authorizes the Secretary of **DHHS** to enter into leases with Indian tribes for periods not in **excess** of 20 years. This authority **may** be exercised independently of GSA. In addition, the statute authorizes the Secretary to reconstruct or renovate the leased property pursuant to **an** agreement with the Indian tribe.
- F. Section 524 of the Education Amendments of 1976 (P.L. 94-482) (20 U.S.C. 2564) authorizes **the** Secretary of **DHHS** to provide suitable space for day care centers for children of **employees** of **DHHS**. The Comptroller General has **ruled that under** that statute the **Secretary may**, if necessary, rent suitable **space for** that purpose. Also see P.L. 99-591, Section 101(m) Title VI, Section 616 (40 U.S.C. 490b).
- G. The **FPMRs** issued by GSA **permit DHHS** to lease space to be used for **certain** cases. This authority includes rentals at a nominal consideration, rentals under a specific case delegation, and rentals of not more than 2,500 square feet, for special purposes **spaces**, for a year with renewable options. See **FPMR 101-18**.

24-04-30 FACTORS GOVERNING ACQUISITION OF REAL PROPERTY

As mere existence of statutory authority to acquire real property is not by itself sufficient to justify an **acquisition** of real property. Such an acquisition is subject to a number of **considerations**. The primary consideration is epitomized in section 321 of **the Public Health Service Act**, which states that the acquisition must be "**necessary to enable** the Service to discharge its functions and duties." A number of other considerations are contained broadly in the following:

- A. Executive Order 11512 - Planning, Acquisition, and Management of Federal Space (March 3, 1970). The efficient performance of the missions and programs of the Department should give due regard to the convenience of the public **served and the maintenance and improvement of safe and healthful working conditions** for employees. Other *considerations* include the need for the **development of areas, the maximum use of existing space**, the cost of new facilities, the availability of low-rent housing, **and** the adequacy of housing.
- B. Executive Order 12372 - Intergovernmental Review of Federal Programs (July 14, 1982). This order establishes a new *Federal policy* for **consultation and cooperation with state and local governments** in the administration of Federal *financial assistance and development programs*. (Formerly contained in **OMB Circular A-95**).

- c. The National Environmental Policy Act of 1969 (P.L. 91-190 as amended). This is a very **comprehensive** statute that pervades all aspects of real estate actions **and** is aimed at restoring and maintaining the quality of our **human** environment. Rather than set forth specific requirements to be observed, the Act calls for a broad and comprehensive assessment by the agency itself of the effect of a proposed action, and the mere overlooking of one aspect may be fatal to a proposed action, if it is attacked. It is by no means limited to real estate actions, but applies with special force to any real property actions, whether acquisition, construction, or otherwise.
- D. The National Historic Preservation Act of 1966 (P.L. 89-665 as amended). This Act provide⁸ for the establishment of a **National Register of Historic Places**, and calls for an evaluation of the effect that a proposed action with respect to a facility will have on such Places, and calls for a prior notification to the Advisory Council on Historic Places. Each **DHHS** Operating Division (**OPDIV**) is responsible for nominating properties under its control for inclusion in the National Register.
- E. Executive Order 11296 - Unified National Program for Managing Flood Losses (August 11, 1966). This **Order** does not prohibit construction in areas having a history of flooding, but rather seeks to discourage uneconomic **uses** and **development** of flood plains and to **lessen** the **risk** of flood **losses**.
- F. Section 355 of the Revised Statutes (40 U.S.C. 255). This statute requires the approval of the Attorney General of title to land prior to the improvement of such **land**. It should be observed regardless of the method of acquisition, except that condemnation obviates any such need. See 24-04-10A.
- G. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646 as amended). This Act is listed among the authorities to be considered in the case of real property acquisitions primarily because of its impact, sometime⁸ substantial, on the cost of acquiring real **property**. It also imposes substantial administrative burdens and may' delay the **obtaining** of possession of real property. Persons displaced by a project, including tenants, are entitled to moving **expenses**, dislocation allowances, payments for loss of earnings in a business or farm operation, and the additional costs of replacement housing. Moreover, **DHHS** must be satisfied that replacement housing is available before a person can be required to move. When **DHHS**'s direct Federal activities cause the displacement of persons from property acquired for **DHHS** use, relocation activities will normally be carried out for **DHHS** by the Federal Highway Administration under government-wide regulations codified by the Department of Transportation at 49 CFR Part 24.

- H. Public Law 90-480 as amended. This Act requires that *Federal* facilities be ~~so~~ designed and constructed ~~as~~ to be accessible to, and usable by, handicapped **persons**, who are *broadly* defined. It applies to facilities designed, **leased**, or financed by the Federal Government. The Act is couched in very broad terms, but the applicable regulations are very specific. Facilities that do not **comply** may have to **be altered**. When facilities that are used only temporarily by the Federal **Government**, facilities that do comply are to be preferred over those that do not. The regulations **governing DHHS** are set forth in **FPMR 101-19.6**.
- I. Occupational Safety and Health Act of 1970 (P.L. 91-596 as amended). This Act calls for the Secretary of Labor to promulgate comprehensive safety and health regulations for the public. **Section 19** of the Act (**29 U.S.C. 668**) requires the several agencies of the Federal Government to provide safe and **healthful working places and conditions** for their employees under standards not inconsistent with the standards set by the Secretary of **Labor**. **DHHS Department Staff Manual -Safety Management adopts the Fire Codes** promulgated by the National *Fire Protection Association*, including the well-known **Life Safety Code (NFPA-101)**, which is specifically *made* applicable to eligible skilled nursing homes by section **1861(j)(13)** of the *Social Security Act*.

In addition, there are a number of recent Federal statutes that subject Federal agencies to State, interstate, and local requirements (as well as Federal **requirements**) and to State procedural *requirements* such as the necessity of permits, as well as to substantive **requirements**. Such agencies are subject to State **administrative** authority and local **courts**.

24-04-40 DHHS USE OF OTHER FEDERAL AGENCY SPACE

DHHS may acquire the right under a temporary permit to use the **property** of another Government agency or, conversely, to **permit** another **Government** agency to use **DHHS property**. Under the **FPMR**, it may acquire the right to use excess *property* prior to its declaration as surplus property or to use surplus property **pending** its disposal. In any *event*, **DHHS** assumes the responsibility for maintaining *property* while making use of it.

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

- 24-05-00 **Disposal Authority**
 - 10 Reporting Recess Real Property
 - 20 **Transfer of Excess** Real Property Between IRS and BIA
 - 30 **Abandonment and Destruction**

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 . . .* 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 united 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 need of -the Government*, after being declared to be **excess** to the need 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 easement 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 license 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 restriction 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.

- 0 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.
- 0 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 repairs, alterations, or improvements.
- 0 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.
- 0 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.
- 0 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 sad surplus real property, pending transfer or disposal, for not more than 12 months plus the period to the ff **rst 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 24-08-A. Delegation of Authority No. 396 of May 3, 1961 (26 P.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 regulation specifically applicable to transfer under section 202(a)(2), SF 118 should be used and the applicability of that section demonstrated by indicating:

0 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

0 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**
- F. **Public notice shall be given in accordance with the instructions in FPMR 101-47.503.**

Subject: **MANAGEMENT OF DHHS OWNED AND LEASED REAL PROPERTY**

24-06-00 Basements

- 10 Outleasing of Property
- 20 Licenses for the Use of DHHS Property
- 30 Regulations for the Management and Use of Space
- 40 **Employee** Welfare/Service Facilities
- 50 Naming of Buildings and Installations

24-06-00 EASEMENTS

- A. Nature of Right-of-Way Easements. A right-of-way easement through Federal lands is a right granted to another to use a portion of the Federal lands for a specified purpose such as a highway or utility line. It is granted for other than a temporary basis and is not revocable solely at the will of the grantor. In short, it is the grant of an interest in the property of the Government and, under the Constitution, it must be authorized by Congress.
- B. Authority of HHS to Grant Easements. Until the enactment of P.L. 87-852 (40 U.S.C. 319), DHHS and its predecessor agencies were not granted broad statutory authority to grant right-of-way easements over Federal lands. It did have the inherent right to give licenses for the use of Government land that were revocable at the will of the Government. Additional authority to use Government property for short terms under the implied authority of DHHS is granted under 5 U.S.C. 301 or under authority delegated by GSA. Inasmuch as easements granted by DHHS convey a recognized interest in real property, they should be recorded by the grantee in the appropriate local land records.
- C. Section 1 of P.L. 87-852 (40 U.S.C. 319) broadly granted to agencies, including DHHS, having custody and control over real property of the United States, the authority to grant easements in, over, and upon such property (other than public domain property or property held in trust for Indians) rights-of-way for highways and utility lines with or without consideration and upon such terms as are deemed appropriate to protect the interests of the United States. Right-of-way easements for highway purposes may be granted to States or political subdivisions thereof. Right-of-way easements for utility lines may be granted to any person making application therefor. DHHS is authorized to relinquish to States legislative jurisdiction over the real property which is the subject of the easement. Such an action may be important in connection with right-of-way easements for highway purposes: otherwise the State would be unable to enforce its traffic laws over the real property made the subject of the easement.

D. **Terms and Conditions of Easements.** The grant of the right-of-way easement may be made for such period of time as is reasonable considering the nature and purpose of the easement, and may be for an indefinite period of time. P.L. 87-852, however, requires that a grant be terminated, in whole or in part, if there has been:

- o a failure to comply with any term or condition of the grant;
- o a consecutive two-year non-use of the easement for the purpose for which it was granted; or
- o an abandonment of the easement.

The grant instrument is to provide that written notice of such a termination be given to the Grantee, or its successor or assigns; the termination is to be effective as of the date of such a notice; and upon termination, all right, title, and interest in the land shall revert to the United States or its assigns.

E. DHHS may impose other terms or conditions to protect the interests of the United States and of the public. Such additional terms and conditions serve to make more explicit the limited purpose of the grant: protect the rights of the public at large; enlarge the basis for a possible termination of the grant; or otherwise enhance the ability of DHHS to enforce the terms and conditions of the grant. Such other terms and conditions include:

- o The Grantee will neither conduct mining operations nor remove any mineral substances from the land.
- o The Grantee will, at its own expense, construct, mark, keep, and maintain, in good condition and repair, any improvements it makes on the property.
- o The Government reserves the right to enter, on occasion, the premises which are the subject of the grant to assure that the terms of the grant are being complied with.
- o The Grantee will indemnify and save the Government harmless from any liability or responsibility whatever arising directly or indirectly from the Grantee's use of the easement and activities on the premises.
- o The Grantee will minimize damage to the scenic and esthetic values of the premises and otherwise protect the environment.
- o The Grantee will comply with air and water quality standards established by or pursuant to Federal or State law.

- o The Grantee will comply with State standards for public health and safety, environmental protection, and the siting, **construction**, operation, **and maintenance of**, or for, rights-of-way for similar **purposes** if those *standards* are more **stringent** than applicable Federal standards.
 - o The Grantee will otherwise protect Federal ^{property} and economic interests and the public interest in the lands traversed by the right-of-way or lands adjacent thereto.
 - o Upon **termination** or forfeiture of the grant, the Grantee, if so requested by the **Government**, will remove from the premises all structures or other **improvements** belonging to the Grantee and **otherwise** restore the ^{premises} to the satisfaction of, and at no cost to, the Government.
- F. 23 U.S.C. 317. In the case of land needed for a right-of-way for a Federal Aid Highway, **DHHS** may transfer lands under the custody and control of **DHHS** to the Secretary of Transportation, who has the authority to make a grant of, and transfer title to, not merely an **easement over**, such lands to State highway departments.

24-06-10 OUTLEASING OF PROPERTY

DHHS has no authority to lease Government land to *another except* for such right to lease excess or surplus property as it may derive from GSA. It ~~es~~ have limited authority to make real property available to *others* as outlined in Chapter 24-06-20. Also, it does have authority under 5 U.S.C. 301 to license property on a revocable-at-will basis.

24-06-20 LICENSES FOR THE USE OF DHHS PROPERTY

- A. Revocable Licenses. The Attorney General has ruled that the **Government** in its control over real property has the inherent right to license the use of such **property** for private purposes provided that the license is revocable at will. **Such** a revocable license does not convey any interest in the real property. **DHHS** has the authority under 5 U.S.C. 301 thus to license the use of property under its control, provided the **license** does not interfere with the **Government's** use of the property and is not otherwise **adverse** to the interests of the United States- Such a license or **permit** **must** not be issued in a discriminatory manner or otherwise violate any statutory provision.
- B. Revocable Permits. Some temporary uses of **DHHS** property involve the use, for a temporary period, of space ~~at~~ that might otherwise be used for Governmental purposes. Such a **temporary** use may be authorized when it is in furtherance of the interests of the Government, such as when it enhances the morale and welfare of employees or patients. Thus, space can

be provided for the use of **employee** unions or for recreational purposes. Space may **also** be provided for the operation of a cafeteria for **employees** if **circumstances** justify such an action. Also included would be the making of space available for day care **centers** for children of **DHHS employees**, but such an action is now governed by statute (P.L. 94-482), which includes the additional authority of providing **equipment** for that purpose.

- C. Other Use of Government Space. The use of non-surplus space by persons outside the Government for a purpose not associated with **DHHS** activities, other than on a revocation-at% basis, must be based on statutory authority. **GSA** may delegate authority to **DHHS** under section 210(a) (13) of the *Federal Property and Administrative Services Act* of 1949 to lease building sites until they are needed for construction. **DHHS** does not have indepeadeat authority to make property available for farming. **GSA** may under section 202 of that Act authorize the leasing of **excess property**. The provision of space for cultural, educational, or recreational activities as provided for by the *Public Buildings Cooperative Use Act (P.L. 94-541)* requires a delegation of authority from **GSA**.
- D. Parking Spaces for Employees. Providing parking spaces for **employees** and visitors is a legitimate use of **DHHS** property. **GSA** regulations in that regard should be applied. It should be noted that penal sanctions do not apply to violations of parking regulations except in the case of Federal enclaves and then only when appropriate authority has been delegated by **GSA**.
- E. The Federal Credit Union Act (12 U.S.C. 1770, formerly 1771) authorizes the Secretary of **DHHS**, at his/her discretion, to provide space, without charge for rent or services, to credit unions 95 percent of whose members are Federal employees.
- F. Randolph-Sheppard Act (20 U.S.C. 107) authorizes the granting of concessions for vending stands in Government buildings, with preference being given to the blind.

24-06-30 REGULATIONS FOR THE MANAGEMENT AND USE OF SPACE

- A. The Department of Health and Human Services' (**DHHS**) authority with respect to space under its custody and control stems basically from 5 U.S.C 301 (formerly contained in 5 U.S.C. 22). That section provides that: "The head of an Executive department . . . may prescribe regulations for the government of his department, the conduct of his employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." That authority is, of course, subject to modification by statutory power and responsibility in specific fields. It should also be exercised in a manner consistent with the General Services Administration's (**GSA**) Federal Property Management Regulations (**FPMR**).

- B. Effect of Regulations. The regulations of the Secretary, such as the regulations dealing with smoking on **DHHS-controlled property**, are enforceable against employees and persons using the property only by administrative action. Violators of such regulations, however, are not subject to penal sanctions except in instances specifically provided for by statute.
- 0 Penal sanctions. The regulations of **DHHS** dealing with the conduct of persons and traffic on certain Federal **enclaves (45 CFR Part 3)** provide for fines of not more than \$50 or imprisonment for not more than thirty days, or both. Those regulations were issued pursuant to a statute appearing at 40 **U.S.C. 318-318d**, authority for which was specifically delegated to **DHHS** by GSA pursuant to section 205(d) of the Federal Property and Administrative **Services Act** of 1949. They are intended to be exercised in accordance with the policies, procedures, and controls prescribed by GSA in **FPMR 101-20.3**. That authority can be applied only to properties under the exclusive or concurrent legislative jurisdiction of the United States (Federal enclaves) and only when authority **therefor has been** specifically delegated by **GSA**.
- 0 Police Enforcement. The delegations **from** GSA such as those referred to above carry with them the authority to appoint employee guards as uniformed policemen with the powers of sheriffs and constables. This includes the power to carry firearms and to make arrests. **Guards** of private agencies and employee guards who are not appointed as special policemen do not have such rights. **Employees** are not to be so appointed without first attending an interagency school for that purpose. Until so appointed, employees should never attempt to arrest a private citizen.
- c. It is essential that **DHHS** maintain as **complete** a record as is feasible of the real property under its custody and control and of the uses being made of it. Such records are **indispensible** inasmuch as there is no general repository of Federal real property records. They are necessary for the compilation of **annual** reports for **GSA**, which keeps annual Inventories of Federal Real Property. They play an **important** role in **determining** whether the real property is being used fully and effectively, **as well as** in the process of complying with numerous requests in that regard. Finally, the records are essential for determining whether statutes and regulations are being **complied** with.
- D. Many of the statutes listed in Chapter **24-04**, relating to the acquisition of real property, apply with equal, or even greater, force to the management and use of space on a continuing basis. This is especially true of the Fire Safety Codes promulgated by the Fire Protection Association and adopted by **DHHS** pursuant to section 19 of the Occupational Safety and Health Act.

- E. Executive Order 12088 (October 13, 1978) calls for Federal compliance with various Federal Pollution Control **Standards**, including the following:
- 0 The Toxic **Substance** Control Act, (15 U.S.C. 2601 et seq.).
 - 0 Section 274(h) of the Atomic **Energy** Act, (42 U.S.C. 2021h).
 - 0 The **Marine** Protection, **Research**, and Sanctuaries Act of 1972, (33 U.S.C. 1401, 1402, 1411-1422, 1441-1444, and 16 U.S.C. 1431-1434.)
 - 0 The **Federal Insecticide, Fungicide, and Rodenticide** Act, (7 U.S.C. 136).
- F. State Control. In addition to the **Acts** listed, Executive Order 12088 call for compliance with other Pollution Control **Statutes**, which **themselves** call for **DEHS** compliance with State, interstate, and local requirements, including procedural **requirements** such as the obtaining of permits, as well as **substantive** requirements. They are as follows:
- 0 Section 313 of the Clean Water Act, (33 U.S.C. 1251 et seq. at 1323). This Act is directed primarily at effluent controls.
 - 0 Section 1447 of the Safe **Drinking** Water Act, (42 U.S.C. 300f et seq. at 300j-6). This Act primarily regulate **public** water **systems** for **water consumption** by the public, that is, having **15 service connections** and serving 25 individuals **60 days** out of the year.
 - 0 Section 4 of the Noise Control Act of 1972, (42 U.S.C. 4901 et seq. at **4903**). This Act is no longer enforced at the Federal level and is regarded as a local **matter**. **Nevertheless**, local requirements must be observed.
 - 0 Section 6001 of the **Resource** Conservation and Recovery Act, amending the **Solid Waste** Disposal Act, (42 U.S.C. 6901 et seq. at 6961). This is a broad expansion of the original Act and is directed primarily at the **disposal** of **hazardous wastes**.
 - 0 Section 118 of the Clean Air Act, (42 U.S.C. 7401 et seq. at **7418**). Under this Act, **National Air Quality Standards** are set to **protect** human health and the **public** welfare. They are based on the health and other effects of certain pollutants and are constantly being expanded to cover other **pollutants**. Emission standards are also set for certain hazardous air pollutants, primarily industrial-

24-06-40 EMPLOYEE WELFARE/SERVICE FACILITIES

A. Authority

- 0 As stated in 24-06-30, the use of non-surplus space by persons **outside the Government** for a purpose not associated with Department of Health and Human Services (DHHS) activities, other than on a revocation-at-will basis, **must** be based on statutory authority*
- 0 **Space** can be made available under a **license** or permit provided it does **not** interfere with the **Government's** use of the property and provided it *is in furtherance of the interests of the Government*, such as the **enhancement** of the **morale and welfare** of **employees** or **patients**. Such use includes employee welfare and recreation associations, cafeterias and **other concessions, health units, vending stands, dry cleaning establishments, and the like.**
- 0 Where **real property is assigned**, for other than official use a written **statement shall** be prepared, setting forth all **requirements pertaining to the assignment**. The **statement shall** be retained in **installation files** for review and shall include the basis for making the **assignment and the terms and conditions governing the use** of the property.

B. Federal Credit Unions

- 0 The Federal Credit Union Act--**Allotment** of Space in **Federal Buildings** (12 U.S.C. 1770) states: **"Upon application** by any credit union organized under State law or by any Federal credit union **organized in** accordance with the **terms** of this chapter, at **least 95 percentum** of the **membership** of which is **composed** of persons who either are presently Federal employees or were Federal employees at the time of **admission** into the credit union, and **members of their families**, which application **shall** be addressed to the officer or agency of the United States charged with the **allotment** of space in the Federal **buildings** in the community or district in which such credit union does **business**, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for heat or **services.**"

An Amendment to the Act, adopted October 15, 1982 (Public Law 97-320), **adds** "For the purpose of this section, the term 'services' includes, but is not limited to, the providing of lighting, heating, **cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems).** Where there is an agreement for

the **payment** of costs associated with the provision of space or services, nothing in Title 31 or any other provision of law, shall be **construed to prohibit or restrict payment by** reimbursement to the miscellaneous receipts or other appropriate account of the Treasury."

- 0 It shall be Department policy, upon request by officially recognized **credit unions**, to assign space in **Department-controlled buildings** that is available and not required for official purposes by the occupant activity controlling the space. Such space will be assigned without **charge for rent and services**, except where there is **an agreement providing for reimbursement**.
- 0 All **credit unions** shall conform to **standards** set forth in **FPMR 101-20.3, "Conduct on Federal Property,"** as well as the regulations and guidelines instituted by the **Department**. Desk-to-desk distribution of credit union **informational** materials and similar **promotional** activities may be authorized by the installation head, provided such activities do not disrupt agency efficiency. Denied requests by credit unions to conduct or **engage** in activities not clearly prohibited by **policy** or regulations may be appealed in writing to the **OPDIV** head. The decision of the **OPDIV** head may be appealed, through proper **channels**, to the **Assistant Secretary for Management** and Budget, whose decision is final.
- 0 The installation head shall, in keeping with these procedures and upon request from officially **recognized credit unions**, reassign available space and services to **credit unions**, limiting the space to that actually *required to conduct effectively the activities* of the **credit unions**. If there is a critical shortage of space at the installation, this will be sufficient reason to **deny** assignment of space to the *credit union*, but only after a review of current space utilization is conducted.
- 0 The space assigned **must** conform to the **minimum standards** on accessibility for the physically handicapped. (See **FPMR 101-19.6**) Space **assigned should be** in a central location within the building, close to main *corridors* to provide convenient access for all **employees**.
- 0 The installation head shall, within available *resources* and in keeping with these *procedures*, provide the following services without charge to *authorized credit unions*:

Maintain heating, lighting, mutilation, and necessary electrical outlets.

Provide housekeeping and maintenance services such as cleaning and **waxing floors, repairing and replacing floor coverings, cleaning and repairing venetian blinds, and cleaning windows,** all in **accordance** with normal building programs for such **work.**

Maintain and repair the building structure in the vicinity of the credit union.

- 0 The responsibilities of the credit union include, but are not limited to, the following:

The installation and maintenance of internal partitioning and **special equipment.**

The arrangement of furniture and **equipment in a manner that will facilitate operation and will minimize congestion, hazards, and general maintenance problems.**

The **submission** of space layout plans of proposed credit unions to the installation head for advance approval to **assure conformance** with sound buildings management practices, **including consideration of health and safety features, electrical system loading, and handicap barriers.**

- 0 The installation head may prepare agreements in memorandum **form, or on printed forms,** provided that the memoranda or printed forms address the following:

Description of space to be assigned, including building name and address, **room number(s), and square footage assigned.**

Official name of the **credit union** and citation of its charter.

That the license or permit issued to the credit union is not assignable and may be *revoked* at will by the Government.

The services which the **Department** will supply without **charge,** such as services to prepare or recondition the initial space assigned to *the credit union,* as well as the services noted **above.**

The services, equipment, or furniture for which the licensee or permittee will be responsible.

The licensee or **permittee** will not discriminate against employees, applicants for employment or **membership**, or patrons **on** the grounds of **age**, race, **creed**, color, national origin, handicap or **sex**, and will **comply** with Title VI of the Civil Rights Act of 1964, section 504 of the **Rehabilitation** Act of 1973, the Age **Discrimination** Act of 1975, and the Department's **regulations** issued pursuant thereto.

The licensee or **permittee** shall conform to the **GSA** rules and regulations relating to conduct on Federal property as set forth in **FPMR** 101-20.3.

Except for the **foregoing** provisions, the license or **permit** may be **modified** and additional terms and conditions added where necessary to fit the particular circumstances. Care **should be** taken to assure **that any modifications** or additional conditions will not be contrary to law or other regulatory **requirements**, or be detrimental to the mission of the host installation.

All **agreements** shall be signed by the appropriate installation **head** and by **an** authorized credit **union official**. **Executed** agreements will be distributed as follows:

Original to licensee or **permittee**.

Copy for the real property **management** files of the installation head.

C. Vending Stands for the Blind

- o The Randolph-Sheppard Vending Stand Act (**40 Stat. 1559**, as amended by **68 Stat. 663, 20 U.S.C. 107**), provides a priority for blind persons in the location and operation of vending facilities on **Federal** property. It also *directs the assignment of vending machine income* and establishes certain State **licensing** agency responsibilities for effective **management** of the vending facility program *for t&e blind in each State*.
- o Blind persons licensed by State licensing agencies designated by the Secretary of Education, under the provisions of the Act, shall be given preference in the operation of vending stands and machines on any **DHHS-controlled** property. Any limitation on the location or operation of a vending facility by a blind vendor, based on a finding that such location or operation would adversely affect the interests of **DHHS**, shall be fully justified in writing to the Secretary of Education who shall **determine** whether such limitation is warranted. A decision made by the Secretary concerning such limitation shall be binding and shall be published in the Federal Register. (See 34 CFR 395.30(b))

- o Consideration shall be given to the inclusion of vending facilities in the **planning** and **construction** of facilities, and in the **leasing** of space when the population of the building will be sufficient to support such a stand. Where it is determined that vending machines are to be installed on leased property, the necessary approval of the lessor shall be obtained prior to the issuance of a permit.

The licensee or permittee shall conform to the GSA rules and regulations relating to conduct on Federal property as set forth in FPMR 101-20.3.

Except for the foregoing provisions, the license or permit may be modified and additional terms and conditions added where necessary to fit the particular circumstances. Care should be taken to assure that any modifications or additional conditions will not be contrary to law or other regulatory requirements, or be detrimental to the mission of the host installation.

All agreements shall be signed by the appropriate installation head and by an authorized credit union official. Executed agreements will be distributed as follows:

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- o Consideration shall be given to the inclusion of **vending** facilities in the *planning* and **construction** of facilities, and in the **leasing** of space when the population of the **building** will be **sufficient** to support such a **stand**. Where it is **determined** that vending machines are to be **installed on leased property**, the **necessary approval** of the lessor shall be obtained prior to the **issuance** of a permit.

- o A permit shall be issued in the name of the applicant **State licensing agency**, and shall **prescribe such procedures** as are **necessary**, as set forth in **FPMR 101-20.2** and in the **Application and Permit**. The permit shall be for an **indefinite term**. **No charge** will be made to the **State licensing agency** for the use of the **Government-furnished** space, or for the **maintenance and repair** of the **building** structure in and adjacent to the **vending stand** areas. This includes **painting and decorating**, utilities **required** to operate the **vending stands** and **vending machines**, and **other related building services** in accordance with the **normal level of service**.

- o In the **granting of permits** to designated **licensing agencies**, or by contract with others, **such as a necessary basic food service operation**, the Department of Education **regulations (34 CFR 395)** and the **procedures** contained in **GSA's FPMR 101-20.2** should be followed. The regulations provide that **income collected from vending machines in competition with a blind vending facility shall accrue** to the State licensing agency as follows:
 - 100 **percentum** of **all income** collected from all **vending machines** in direct competition with vending facilities operated by **blind vendors**.

 - 50 **percentum** of **all income** collected from vending machines not in direct competition with a blind vending facility.

 - 30 **percentum** of **all income** collected from **vending machines** not in direct competition with vending facilities operated by **blind vendors** at which at least 50 percentum of the total hours worked on **premises** occurs during a period other than **normal working hours**.

- o It shall be the responsibility of the on-site installation head to determine whether a vending **machine** on the property is in direct competition with a **vending** facility operated by a **blind vendor**, subject to the concurrence of the **State licensing agency**.

The collection of vending **machine** income by the responsible property management officer and its disbursement to the appropriate State licensing agency shall be conducted on at least a **quarterly** basis.

All arrangements pertaining to the operation of vending machines on DHHS-owned or -leased property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangements so as to satisfy the provisions of this section.

The provisions of this section shall not apply to income from vending machines which are not in direct competition with a blind vending facility on DHHS-owned or -leased property and whose total income does not exceed \$3,000 annually.

D. Day Care Centers

- o In accordance with Public Law 99-591, Section 101(m) [Title VI, Section 616], (40 USC 490b), space in Government buildings may be allotted for day care centers for children of DHHS employees at no cost. Also see Section 524 of the Education Amendments of 1976 (P.L. 94-482) (20 U.S.C. 2564).
- o The officer in charge of the installation will determine whether there is a need for a center, and will be responsible for initiating the revocable permit for use of the space.

E. Federal Employee Health Units

- o The provision for the establishment of health programs for Government employees is contained in P.L. 79-658 (5 U.S.C 7901). The Act provides that employee health units shall be established only after consultation with the Division of Federal Employee Occupational Health, Health Resources and Services Administration, and consideration of its recommendations, and only in localities where there is a sufficient number of Federal employees to warrant the provision of such services.

In most instances, a formally organized health program may be provided in buildings where the number of Federal employees to be served exceeds 300.

Employee health units can also be operated by another agency or agencies, or even by contract with an outside source, subject to the provisions of the aforementioned Act. For employee groups of less than 300, management may make arrangements by contract with private physicians to provide services such as physical examination, health screening, and other preventive services.

- o The administration and operation of health units in Federal buildings by the Division of Occupational and Beneficiary Health Services is based on its agreement for reimbursement with the Federal agency involved.

F. Establishment and Operation of Concessions

0 Concession-type activities are those which sell a commodity or perform a service at an established price. This includes, but is not limited to, barber *and* beauty shops, taxi stands, vending stands **and machines, commissaries, mobile vending stands, canteens, soda fountains, lunch counters,** and cafeterias.

0 It is **DHHS** policy to provide for concessions **which** are both convenient **and** beneficial for employees and patients, and which are likely to increase employee morale and **efficiency**. The installation head will determine whether concessions are needed and feasible by the following criteria:

- sufficient funds **must** be available to *defray* any cost for which DHHS will be **responsible** under the contractual agreement.

Sufficient **and** satisfactory space, not required for official purposes, must be available for the **concession**.

It **must** be possible to **establish** and operate each concession in conformance with applicable safety, health, **and** sanitation codes.

The commodities and **services** sold shall be limited to those which are beneficial for employees and patients and which cannot easily be obtained from existing facilities.

Each concession shall be required to **serve** all Federal **employees** or *patients* without regard to their age, race, creed, color, national origin, handicap or **sex**.

0 In granting permission to operate **concession-type** activities, the following activity/use **categories** shall be considered in the order of precedence listed below:

- Activities involving the rehabilitation and therapy of patients under Sections 341-346 of the Public Health Service Act, as amended, 42 **U.S.C.** 257-261, the employment of Indian labor and the selling of products of Indian Industry under the provision of the Buy Indian Act, as amended, ²⁵**U.S.C.** 47 **and** the operation of vending facilities for the blind under the Randolph-Sheppard Vending Stand Act, as amended, 20 **U.S.C.** 107 et seq.

Activities of **DHHS Employees Associations**.

Uses by private individuals and **organizations**.

- Questions concerning this order of precedence should be addressed to the Deputy Assistant Secretary for Administrative and Management Services who will secure, when appropriate, the advice of the Office of General Counsel.

- 0 **Commissaries** and similar enterprises involving the use of DHHS facilities for the sale of groceries, household goods, appliances, and any other commodity to employees, will not be established at any installation unless it is isolated or remote and extreme hardship would result if such activities were not permitted. The officer in charge shall submit a statement justifying the need for the commissary to the OPDIV prior to the establishment of the commercial activity. The statement shall include information on the availability of foodstuffs and other supplies, transportation problems (goods and services), special living allowances, a comparison of local prices and those likely to be established at the concession, and other pertinent information.

- 0 The installation head for each installation is responsible for insuring that applicable regulations are complied with and that proper conduct is maintained at each concession. In particular, the installation head must insure that operations are conducted in conformance with the terms and conditions of the license, applicable Federal, State, and local regulations for safety, health, and sanitation, and such other operating standards as may be issued.

Unless otherwise stipulated in the license, the concessionaire shall provide as follows:

Equipment and facilities, unless Government equipment is already installed. All equipment shall be in good condition and operating efficiently.

Space preparations and subsequent alterations required for the installation and operation of the concession, and costs entailed in the removal of equipment, restoration of premises, etc., upon termination of the license.

- Cleaning of the area in an acceptable manner. If cleaning and related services are provided by the Government, the concessionaire shall reimburse the Government at actual cost when known, or otherwise at a cost estimated by the installation head.

- Reimbursement for utilities such as heat, light, power, telephones, as determined by the installation head, based on separately metered or estimated consumption. For vending machines contracted for by employee associations, \$1.00 per month for each vending machine will be charged.

The **concessionaire** will comply with the Equal Opportunity Clause prescribed by **Executive Order 11246**, and "**Rules of Conduct on Federal Property**" as set forth in **FPMR 101-20.3**.

- 0 The concession **agreement**, entered into in **accordance** with the **Federal Procurement Regulation (FPR)** issued by **GSA**, must be signed by a **contracting** officer with delegated **authority**.

24-06-50 NAMING OF BUILDINGS AND INSTALLATIONS

- A. **Naming of Buildings.** Under section 410 of the **Public Buildings Act of 1949 (40 U.S.C. 298d)** the **Administrator** of **General Services** has the authority to **name, rename, or otherwise designate any building** under the custody and control of **GSA** regardless of whether it was **previously renamed by statute**. Likewise, **DHHS assumes the authority, under 5 U.S.C. 301**, to name its own buildings. The *primary* purpose in designating an official **name** for an **DHHS installation or building is to identify the** occupying activity *for the public* and official visitors.
- B. **Signs and Plaques.** All **identifying signs, plaques, doors, etc., shall be lettered** as follows:

0 **U.S. Department of**
Health and Human Services
Operating Division
Bureau
Division, Office, or Program

The size of **lettering** should be in proportion to the size of the sign. The **Department** legend shall be the largest size letters.

- 0 **Grounds** and entrance **signs or plaques** should be of a size to be easily readable from a passing vehicle and should be placed at the main entrance to field installations.
- 0 Where entrances to installations are properly identified, individual buildings may be identified **according** to their primary use.
- 0 The **General Services Administration** has adopted the following inscription for *all* cornerstones for **Federally-constructed** buildings:

United States of America
President
(Name of President at **the time cornerstone is set**)
19--
(Year *construction started*)

Additional names, if any, will be determined on a case-by-case basis.

- o No plaques or tablets which pertain to the construction of the building or to those responsible for the construction will be placed on **the interior** of a building.
- c. The Secretary may name or **rename** (in honor of deceased persons) **installations** or buildings held by **DHHS** in the absence of specific expression by the Congress of its preference for naming the property.
- D. **Deceased persons may be memorialized**, subject to the approval of the **Secretary**, as follows: (1) those who **have distinguished** themselves by making an **outstanding contribution toward the** establishment and accomplishment of major **programs of national or international interest and importance**; (2) those who have **firmly established an eminent position in the Government**; and (3) those who have held positions of high and **extensive responsibility**. **Requests will not be approved where the naming of the building for the deceased person would prevent the identification of the organizational activity to the public.**
- E. It is Department policy not to **name an installation** or building under the custody and control of the **Department** in honor of a **living person**.
- F. A memorial or plaque erected on or in **buildings** or on land under the **custody** and control of the **Department** shall be subject to a revocable **permit** issued by the person responsible for the installation. No part of the cost of installation, **maintenance**, or removal shall be borne by the **Government**.

The following **standards** shall be applied in connection with the erection of approved memorial or plaques:

- o Design. The **design** should be of such material, proportion, and detail as will harmonize with its **surroundings** in a dignified and appropriate **manner**.
- o Inscription on Plaques. The **inscription** should be held to the minimum required to **accomplish** the purpose of the plaque.
- G. To process a request for **memorialization honor**, the following information and attachments shall be submitted by the OPDIV to the Office of Special Programs Coordination, **CAMS**, for action in the Office of the **Secretary**:
 - o A biography of the individual to be honored;
 - o copies of pertinent official files concerning the individual;
 - a . photographs of *the installation, building, room, etc.*, to be **named** in honor of the individual;

- o if new construction is involved, completion dates, description of the facility., etc.;
- o **recommendations** as to action to be taken on the memorialization request **and** planning of the **dedication ceremony**;
- o designation of an official to coordinate required actions; and
- o if the request proposes a **memorial** or plaque for an individual or group, the following additional information should be furnished:
 - complete justification for the **memorial** or plaque, including the proposed inscription; and
 - sketches showing the design and location on the site or **building** and **photographs** of the building or site.

The OPDIV will be notified of the action taken on the request.

H. Dedication Ceremonies . The **completion** of a new **DHHS** installation, building, or *major* extension to an existing building is an event of importance to the program and to the **local community**. Therefore, it is the policy of the Department to recognize the occasion by planning and conducting appropriate **dedication ceremonies**. It is also Department **policy** not to hold ground-breaking or **cornerstone-laying ceremonies** unless circumstances dictate otherwise.

The *OPDIV* **Head** is responsible for the planning and execution of dedication ceremonies, and may appoint a dedication **committee** of staff to assist in the ceremonial program, and will determine on a case-by-case basis if there is a need for **headquarters** staff participation. Plans for publicizing the **naming** and/or dedication of Department installations and buildings, including the erection of memorials and plaques, shall be reviewed by the appropriate **DHHS** Regional Director (for field facilities) and by the Office of the **Assistant Secretary for Public Affairs**. This requirement shall include public information clearance of **news** releases for press, radio, and television; printed program¹³ and **commemorative** booklets; and any other printed speeches to be delivered by **DHHS** staff. Requests for assistance concerning dedication ceremonies may also be directed to the Director, Congressional Liaison Office; or the **OSPC/OAMS** as appropriate.

