

## Department of Health and Human Services

## § 12.3

(e) *Department* means the U.S. Department of Health and Human Services.

(f) *Disposal agency* means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) *Excess* means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) *Fair market value* means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) *Holding agency* means the Federal agency which has control over and accountability for the property involved.

(j) *Nonprofit institution* means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) *Off-site property* means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) *On-site* means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) *Public benefit allowance* means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) *Related personal property* means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) *Secretary* means the Secretary of Health and Human Services.

(p) *State* means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) *Surplus* when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988]

### § 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health purposes, as provided for in section 203(k) of the Act.

### § 12.3 General policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time

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of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9.

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm; clinical services; services (including shelter) to homeless individuals; other public health services (including water and sewer); or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to homeless individuals may be eligible for leases under title V of Public Law 100-77. Except for the provision of services (including shelter) to homeless individuals, organizations which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The eligible organization must be authorized to carry out the activity for which it requests the property.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handi-

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cap, or national origin in the use of the property.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988; 55 FR 32252, Aug. 8, 1990]

### § 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

### § 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

### § 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

### § 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the office specified in the notice of availability.

[55 FR 32252, Aug. 8, 1990]