

**Pt. 12**

of this section is required before the Secretary determines whether to allow an employee to produce those records, the employee or counsel for the employee shall—

(1) Inform the court or other authority of the regulations in this part; and

(2) Request that the demand be stayed pending the employee's receipt of the Secretary's instructions.

(e) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the Secretary's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

(Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474)

**PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES**

**Subpart A—General**

Sec.

12.1 What is the scope of this part?

12.2 What definitions apply?

12.3 What other regulations apply to this program?

**Subpart B—Distribution of Surplus Federal Real Property**

12.4 How does the Secretary provide notice of availability of surplus Federal real property?

12.5 Who may apply for surplus Federal real property?

12.6 What must an application for surplus Federal real property contain?

12.7 How is surplus Federal real property disposed of when there is more than one applicant?

12.8 What transfer or lease instruments does the Secretary use?

12.9 What warranties does the Secretary give?

12.10 How is a Public Benefit Allowance (PBA) calculated?

**Subpart C—Conditions Applicable to Transfers or Leases**

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

**34 CFR Subtitle A (7–1–13 Edition)**

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

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

**Subpart D—Enforcement**

12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

**Subpart E—Abrogation**

12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

**APPENDIX A TO PART 12—PUBLIC BENEFIT ALLOWANCE FOR TRANSFER OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES**

AUTHORITY: 40 U.S.C. 471–488; 20 U.S.C. 3401 *et seq.*; 42 U.S.C. 2000d (1) *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794 *et seq.*; 42 U.S.C. 4332.

SOURCE: 57 FR 60394, Dec. 18, 1992, unless otherwise noted.

**Subpart A—General**

**§ 12.1 What is the scope of this part?**

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

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

**§ 12.2 What definitions apply?**

(a) *Definitions in the Act.* The following terms used in this part are defined in section 472 of the Act:

Administrator  
Surplus property

(b) *Definitions in the Education Department General Administrative Regulations (EDGAR).* The following terms used in this part are defined in 34 CFR 77.1:

Department  
Secretary  
State

(c) *Other definitions:* The following definitions also apply to this part:

*Abrogation* means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

*Act* means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

*Applicant* means an eligible entity as described in §12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

*Lessee*, except as used in §12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

*Nonprofit institution* means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

*Off-site property* means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

*On-site property* means surplus Federal real property, including any related personal property—other than off-site property.

*Period of restriction* means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

*Program and plan of use* means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

*Public benefit allowance* (“PBA”) means the credit, calculated in accordance

with appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

*Related personal property* means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

*Surplus Federal real property* means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

*Transfer* means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

*Transferee* means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 *et seq.*)

### § 12.3 What other regulations apply to this program?

The following regulations apply to this program:

- (a) 34 CFR parts 100, 104, and 106.
- (b) 41 CFR part 101–47.
- (c) 34 CFR part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d–1 *et seq.*; 29 U.S.C. 794 *et seq.*; 20 U.S.C. 1681 *et seq.*; Executive Order 12549; and 20 U.S.C. 3474)

## Subpart B—Distribution of Surplus Federal Real Property

### § 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101–47.308–4.

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