

CHAPTER 14

Permits and Transfer of Government-Owned Property to Navy

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Appendix "A" GSA Form 1334

CHAPTER 14

PERMITS AND TRANSFER OF GOVERNMENT-OWNED PROPERTY TO NAVY

1. PURPOSE AND SCOPE.

This Chapter prescribes the policy and procedures in acquiring real property for Navy by permits and transfer of Government-owned real property to Navy.

2. REFERENCES.

- (a) DOD Directive 4165.6 of 1 Sep 1987
- (b) Title 10 U.S.C. 2571(a)
- (c) SECNAVINST 11011.47 of 20 Jun 1983
- (d) Title 10 U.S.C. 2662
  
- (f) 40 U.S.C. 471 Seq. - Federal Property and Administrative Services Act of 1949, as amended

3. DEFINITION.

The terms permit and license are considered to be identical and interchangeable. For the purpose of this Chapter, which deals with permits or licenses to the Navy from another Government department or agency, the word permit will be used exclusively. However, wherever the word permit is used, the word license could properly be used. There are numerous definitions of the term permit, but there are certain essential elements which are included in all of them. These are that permits are revocable at will, terminate upon the death of either party or the transfer of title to the real property, grant personal privileges which are not assignable, and do not grant or convey any estate in the real property. The following is one definition which includes all these elements:

"A permit is a personal privilege which conveys no estate, and is revocable at the pleasure of the party making it. It is an authority to do a lawful act which without it would be unlawful, and, while it remains unrevoked, is a justification for the lawful act which it authorizes to be done. It ceases with the death of either party, with transfer of title, or by whatever would deprive the permittor of doing the acts in question or giving permission to others to do them. It cannot be transferred or alienated by the permittee because it is a personal matter, and is limited to the original parties to it."

This definition is adopted for the purposes of this publication.

4. USE OF PERMITS, GENERAL.

Permits will ordinarily be used only when the use contemplated is of a temporary nature and does not involve the expenditures of

Government funds contrary to the provisions of paragraph 5, or no detriment to the Government will result from its revocation. As a permit contains no warranty of title, it is necessary before making use of property under a permit that the Engineering Field Division (EFD) determine that the permittor has such an interest in the land as to be able to issue the permit. This is a matter of utmost significance in those cases in which construction is contemplated.

5. DEPARTMENT OF DEFENSE PROHIBITION AGAINST EXPENDITURES OF GOVERNMENT FUNDS ON NON-GOVERNMENT OWNED LANDS.

The requirements of the Secretary of Defense under reference (a) prohibiting the expenditure of Government funds for the construction of buildings or improvements of permanent type on land in which the rights of the Government are less than fee title or permanent easement are equally applicable to lands used by the Government under a permit as they are to lands used under a lease.

6. RIGHT-OF-ENTRY PERMITS.

Permits granting a right-of-entry are appropriate for purposes of appraising, surveying, making test borings and soil examinations, and otherwise inspecting the property. These will normally be obtained in connection with the planning of a project. As damages to the property will not ordinarily occur, no consideration will normally be paid for this right. If, however, damages are anticipated but the amount thereof cannot be determined in advance, the permit will set forth the criteria for their subsequent determination and provide for their payment.

7. RIGHT-OF-WAY PERMITS IN LIEU OF EASEMENTS.

In those cases in which right-of-way for fuel, water, sewer, or gas pipelines, electric conduits or power lines, roads, or other utilities are required, ordinarily easements will be obtained, unless the use is temporary. However, in some states there is no authority, except by legislative act, for its officials or those of its subdivisions to grant easements over or across roads and highways. Likewise some railroads and public utility companies lack the authority to grant easements over their rights-of-way. In this situation the choice is between condemning an easement against the state, or a subdivision thereof, or the utility company, or accepting a lesser right in the right-of-way. When a condemnation proceeding is to be filed against other lands or interest therein, the required right-of-way will be included therein. If this is not the case, the matter will be submitted to NAVFACENOCOM as required by paragraph 11 if the construction cost will exceed \$25,000.

8. OTHER TYPES OF PERMITS.

In addition to permits for rights-of-entry and rights-of-way, permits for the following purposes may be utilized: office space, pole

attachments, obstruction lights or markers, sewer connections, maintenance of signs, bus shelters, spoil or dredger tailings, removal of material and drainage, and for other short term or temporary uses.

9. PERMITS FROM OTHER DEPARTMENTS AND AGENCIES.

Permits from other Government departments and agencies differ in many respects from permits obtained from individuals, corporations, or states and subdivisions thereof. To begin with they are not, in the strictest sense, permits at all, for a permit requires two parties while here there is only one, the United States Government. A permit from another Governmental entity may be for a stated length of time or for an indefinite period without the right of revocation by the issuing agency. If such a document were obtained from an individual, corporation, or state, it would be a lease or an easement. Likewise the prohibition against construction on permitted lands (paragraph 5) does not apply to lands under permit from another Government department or agency as that prohibition is against the expenditure of Government funds on lands in which the Government holds less than fee title or permanent easement. However, the interest of the other Government department or agency must be determined as that department may only lease the land or hold a permit for its use, in which case the prohibition would apply. Further, the terms and conditions of the lease or permit may limit the use of the property thus prohibiting the use intended by the Department of the Navy.

10. DELEGATION OF AUTHORITY.

Authority is hereby delegated to Commanders/Commanding Officers of Engineering Field Divisions to negotiate, execute or accept, renew, modify, and terminate permits and other agreements of a similar nature from other departments and agencies of the Federal Government and from states or subdivisions thereof, corporations, and other persons for the use of real property by the Department of the Navy, subject to the requirements of paragraph 11, 12, and 13, hereof. The authority delegated herein may be redelegated.

11. APPROVALS REQUIRED FOR PERMITS.

In those cases in which the acceptance of a permit is appropriate in the furtherance of the planning or in the execution of a military construction project, no further approvals are required as it will be deemed that these approvals have been obtained when the project was approved if the permit is from another department or agency of the Federal Government. If use of property not owned by the United States of America and no construction is involved, the approval of the Commanding Officer of the using activity will be obtained. If use of property not owned by the United States of America is involved and cost of proposed construction will not exceed \$25,000, the approvals of the Commanding Officer of the using activity and the major claimant will be obtained. If expenditure

of Government funds in excess of \$25,000 on property not owned by the United States of America is involved, the Engineering Field Division will obtain the approvals of the Commanding Officer of the using activity, the cognizant Command or Commands up to and including the major claimant prior to submitting the proposed permit to the Commander, Naval Facilities Engineering Command, requesting a waiver from the Secretary of Defense prohibition imposed by reference (a). This prohibition is fully set forth in Chapter 13, of this publication.

12. REVIEW BY COUNSEL.

Permits and other agreements will be approved by Counsel as to legal form and sufficiency prior to execution or acceptance by the EFD.

13. DISTRIBUTION OF PERMITS.

When a permit has been accepted by the EFD, distribution will be made as follows:

Original	EFD Files
Executed Copy	Permitter
Executed Copy	NRFC (with Daily Report of Obligation)
Conformed Copy	Cognizant Command, Bureau or Office
Conformed Copy	Commanding Officer or Head of Using Activity

In those cases in which there is no actual payment, the original document need not be transmitted to the Navy Regional Finance Center. However, the original document must be retained by the EFD for future transmission to the Navy Regional Finance Center in the event a claim arises out of the permit. Distribution of the executed copy to the permitter may be accomplished by mail or personal delivery. Modifications and amendments of permits will be distributed in the same manner as the basic permit. The activity's Real Property Inventory and its Real Estate Summary Map must be updated promptly as described in Chapter 27.

14. TRANSFER OF GOVERNMENT-OWNED REAL PROPERTY TO THE DEPARTMENT OF THE NAVY.

Transfers of Government-owned real property among departments and agencies of the Federal Government fall into two categories. These two categories are:

- a. Transfers from other military departments; and,
  - b. Transfers from all other departments or agencies.
- Transfers from the "Coast Guard" fall into category "a".

15. AUTHORITY TO TRANSFER.

Authority to accomplish the transfer of real property from a military department to the Department of the Navy without compensation is contained in reference (b).

16. INITIATION OF TRANSFERS.

Transfers to the Navy may be initiated either through the screening process or by direct request by the Secretary of the Navy when a requirement for the real property of another military department arises. If a Navy requirement for such property exists, action is to be taken by the EFD to notify the military department controlling the property of the Navy's requirement therefor and request further executing action be held in abeyance until all approvals required by the Navy are obtained.

17. APPROVALS REQUIRED.

The Commander, Naval Facilities Engineering Command is authorized by reference (c) to take all necessary action to accomplish the transfer real property which is excess to the needs of the other military departments and other Federal agencies. The EFD will procure the approvals of the cognizant command, bureau or office and major claimant, or for Marine Corps projects, the approval of the Commandant of the Marine Corps prior to submission to NAVFACENGCOM. If the estimated value of the real property is in excess of \$100,000, a report to the Armed Services Committees of Congress in compliance with reference (d) will be prepared for transfers involving military departments. A preliminary draft of the report will be prepared by the EFD and will be forwarded to NAVFACENGCOM with the request for transfer. The report will be submitted to the Committees when the approval therefor has been obtained from the Assistant Secretary of Defense (Installations and Logistics) as required by reference (e). Transfers from the General Services Administration and Coast Guard are not subject to the reporting requirements of reference (d), except for formerly private owned lands acquired through an exchange. All land acquisitions that involve the purchase, withdrawal from public domain, lease or permit from individuals or government entities, or any other type of use agreement involving more than 1,000 acres, or land whose estimated purchase price or annual lease price exceeds \$1 million require Assistant Secretary of Defense (Economic Security) approval. The EFD/EFA will prepare justification for such acquisition and submit to NAVFACENGCOM with the request for approval.

1200,000

18. AUTHORITY FOR TRANSFER FROM NON-MILITARY DEPARTMENTS AND AGENCIES.

Reference (f) as implemented by Federal Property Management Regulations (FPMR) of the General Services Administration (GSA) provides the procedures and approvals necessary for the transfer of real property from non-military departments and agencies to the Department of the Navy. Such transfers are normally executed or authorized by the GSA in accordance with provisions of Subpart 101-47.203-7 of the FPMR. However, some specific transfers of real property may be accomplished without reference to the GSA but must be made in accordance with the principles set forth in this section of the FPMR. Requests for transfer of property reported as excess to the GSA must be made on GSA form 1334, a copy of which is attached as Appendix "A", and if reimbursement for the property is not to be made, must be accompanied by a written statement signed by the head of the agency as provided by Subpart 101-47 (f) (2) (ii) (B) (1). Accordingly, requests for transfers of this type will be submitted by the Commanding Officers, via the chain of command including the major claimant to the EFD. The EFD will prepare a planning report for the acquisition of real property including an estimate of the value of the real property involved and forward to the Commander, Naval Facilities Engineering Command for review, obtaining requisite additional approvals as required and for preparation of the required written statement if reimbursement is not to be made. If approved, the EFD will be so advised and provided with the required written statement and authorized to submit the statement with appropriate GSA Form 1334 to the Regional Office of GSA requesting the transfer.

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ENCLOSURE (2)

19. ACTION DURING SCREENING PROCESS.

When another Federal agency reports real property excess to its needs, the General Services Administration screens the other Federal agencies including the Department of Defense, to determine whether there is a Federal requirement for the property. The Department of Defense screens the Navy through NAVFACENGCOCM. If a Navy requirement is disclosed by such screening, the Department of Defense is advised thereof and requested to inform the General Services Administration of the Navy's requirement. Usually this is preliminary action and delays disposal by General Services Administration until the requirement can be fully developed and all approvals obtained (Subpart 101-47.203-5 FPMR). The approvals required to accomplish this type of transfer are the same as those stated in paragraph 17. However, clearance under reference (d) is not required even if the estimated value of the real property is in excess of \$50,000.

20. REQUEST FOR TRANSFER BY EFD.

When all approvals have been obtained, NAVFACENGCOCM will so advise the EFD and will also furnish advice as to whether the transfer will be made with or without reimbursement. If with reimbursement, NAVFACENGCOCM will make suitable arrangements to provide the required funds. If the transfer is to be without reimbursement, NAVFACENGCOCM will make the certification and provide the documentation required by section 101-47.203-7(f)(2)(iii) of FPMR issued pursuant to reference (c). Within NAVFACENGCOCM, the Deputy Assistant Commander for Real Estate has the authority to sign the certification prescribed by reference (c). The EFD will, upon receipt of the above advice, file with the Regional Office of the General Services Administration, Form 1334, attaching thereto any appropriate certification or documentation,

the acquiring activity will make the appropriate

has been approved in accordance with paragraph 18 as being without reimbursement the EFD/EFA will.

21. TRANSFER AND ACCEPTANCE OF CUSTODY.

When all approvals have been obtained, NAVFACENCOM will make a formal request for the transfer of the real property required by the Navy. Upon receipt of the document evidencing the transfer (release) of that property to the Navy, the EFD will arrange for the acceptance of custody and control of, and jurisdiction over the property by the activity having the requirement therefor. Concurrently, the EFD will provide to the activity appropriate guidance and assistance in updating its Real Property Inventory to reflect acquisition of the transferred Class II property. Promptly thereafter and as described in Chapter 27, the EFD will modify the activity's Real Estate Summary Map to reflect acquisition of the transferred property, obtain the applicable instruments of title, and document the applicable jurisdiction. Upon receipt by the EFD of the transfer document, arrangements will be made to have the Naval activity accept physical custody of the property and to include such Class I property in the Navy plant account.

**APPENDIX A**

<b>REQUEST FOR TRANSFER OF EXCESS REAL AND RELATED PERSONAL PROPERTY</b>	1. GSA CONTROL NO.	PAGE	<b>THIS BLOCK FOR USE BY AGENCY RECEIVING REQUEST</b>
	2. DATE OF REQUEST	OF	
3. TO (Name, address and ZIP Code of Agency using to request to transfer the property)	4. FROM (Name, address, and ZIP Code of Agency requesting transfer of the property)	PAGES	DATE REQUEST RECEIVED
			HOLDING AGENCY NO. (if any)
			\$
			\$
			\$
			\$
			\$
5. REQUESTING AGENCY'S REPRESENTATIVE TO BE CONTACTED FOR FURTHER INFORMATION (Name, address and ZIP Code)	6. PROPERTY IDENTIFICATION AND ADDRESS (Include ZIP Code)		

7. REAL PROPERTY REQUESTED					
A. STRUCTURES			B. LAND		C. UTILITIES
USE	NUMBER OF BUILDINGS	FLOOR AREA (Sq. Ft.)	AGREEMENT'S INTEREST	ACRES (Acres or Sq. Ft.)	
(Cat)	(Cat)	(Cat)	(Cat)	(Cat)	
(1) OFFICE			(1) FEI		
(2) STORAGE			(2) LEASED		
(3) OTHER (Specify)			(3) OTHER (Specify)		
(4) TOTAL			(4) TOTAL		
8. RELATED PERSONAL PROPERTY REQUESTED				9. ARE FUNDS AVAILABLE FOR REIMBURSEMENT FOR THE TRANSFER OF THIS PROPERTY?	
				<input type="checkbox"/> YES <input type="checkbox"/> NO	

**10. CERTIFICATION**

Certification is hereby made that this Agency has a need for the property identified above to carry on an approved program; that the transfer thereof to this Agency for the purposes intended would be in accord with the intent of Congress with respect to that program; that the requirements cannot be satisfied by better use of this Agency's existing property; and that the proposed land use is in compliance with the provisions of Federal Management Circular FMC 73-5, and would be consistent with FPMR (51 CFR) 101-11.3 and 101-11.5. The statement of justification under block 11 below for the transfer of the property requested is complete and accurate.

SIGNATURE	TITLE	DATE

11. **STATEMENT OF JUSTIFICATION** (This statement must include data with respect to all factors covered in FPMR (51 CFR) 101-11.3 and 101-11.5. Instructions for Preparation of GSA Form 1324.)

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