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# Part II

# General Services Administration

## 41 CFR Parts 102–71, 102–72, et al; Federal Management Regulation; Real Property Policies Update; Final Rule

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, and 102–83

**[FMR Amendment 2005–03; FMR Case 2005–102–8]**

**RIN 3090–AI17**

## Federal Management Regulation; Real Property Policies Update

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) to update the legal citations to conform to Public Law 107–217 and to incorporate additional policy guidance. Public Law 107–217, which was enacted on August 21, 2002, revised, restated, and recodified, without substantive change, certain laws related to public buildings, property, and works in Title 40 of the United States Code. Accordingly, this final rule cancels and replaces in its entirety FMR Amendment C–1 issued December 13, 2002. In addition to updating the legal citations, this final rule implements new accessibility standards for Federal facilities and provides additional real property policy coverage on the integrated workplace, sustainable development, outleasing, telework, siting antennas on Federal property, seismic safety, screening of excess real property, and the National Environmental Policy Act of 1969 (NEPA), as amended. The FMR and any corresponding documents may be accessed at GSA's Web site at *http://www.gsa.gov/fmr*.

**DATES:** Effective Date: November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *Stanley.langfeld@gsa.gov*. Please cite FMR case 2005–102–8, Amendment 2005–03.

**SUPPLEMENTARY INFORMATION:**

### A. Background

As part of GSA's regulatory improvement initiative, GSA published a final rule that created FMR parts 102–71 through 102–82 (41 CFR parts 102–71 through 102–82), entitled ''Real Property Policies,'' in the **Federal Register** on January 18, 2001 (66 FR 5358). On December 13, 2002, GSA published FMR Amendment C–1 as a final rule in the **Federal Register** (67 FR 76820), which completed the transfer of coverage on real property policies from the Federal Property Management Regulation (FPMR) to the FMR and created a separate part, FMR Part 102–83, to deal specifically with updated policy concerning the location of space. Also, on December 13, 2002, GSA published FPMR Amendment D–99 as a final rule in the **Federal Register** (67 FR 76882), which removed all real property policy coverage from the FPMR and provided cross-references that directs readers to the coverage in the FMR.

### B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, and 102–83

Administrative practice and procedure, Blind, Concessions, Federal buildings and facilities, Fire prevention, Government property management, Homeless, Individuals with disabilities, Location of space, Occupational safety and health, Parking, Real property acquisition, Security measures, Surplus Government property, Utilities.

Dated: August 24, 2005.

**Stephen A. Perry,**

*Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as set forth below:

■ 1. Revise part 102–71 to read as follows:

**CHAPTER 102—FEDERAL MANAGEMENT REGULATION**

**SUBCHAPTER C—REAL PROPERTY**

## PART 102–71—GENERAL

Sec.

102–71.5 What is the scope and philosophy of the General Services Administration's (GSA) real property policies?
102–71.10 How are these policies organized?
102–71.15 [Reserved]
102–71.20 What definitions apply to GSA's real property policies?
102–71.25 Who must comply with GSA's real property policies?
102–71.30 How must these real property policies be implemented?
102–71.35 Are agencies allowed to deviate from GSA's real property policies?

**Authority:** 40 U.S.C. 121(c).

### § 102–71.5 What is the scope and philosophy of the General Services Administration's (GSA) real property policies?

GSA's real property policies contained in this part and parts 102–72 through 102–82 of this chapter apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. These policies cover the acquisition, management, utilization, and disposal of real property by Federal agencies that initiate and have decision-making authority over actions for real property services. The detailed guidance implementing these policies is contained in separate customer service guides.

### § 102–71.10 How are these policies organized?

GSA has divided its real property policies into the following functional areas:

(a) Delegation of authority.
(b) Real estate acquisition.
(c) Facility management.
(d) Real property disposal.
(e) Design and construction.
(f) Art-in-architecture.
(g) Historic preservation.
(h) Assignment and utilization of space.
(i) Safety and environmental management.
(j) Security.

(k) Utility services.
(l) Location of space.

**§ 102–71.15 [Reserved]**

**§ 102–71.20 What definitions apply to GSA's real property policies?**

The following definitions apply to GSA's real property policies:

*Airport* means any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

*Alteration* means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs that are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

*Carpool* means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis.

*Commercial activities*, within the meaning of subpart D, part 102–74 of this chapter, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not commercial activities for purposes of this part.)

*Cultural activities* include, but are not limited to, films, dramatics, dances, musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

*Decontamination* means the complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

*Designated Official* is the highest ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials.

*Disabled employee* means an employee who has a severe, permanent impairment that for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit, including the Department of Veterans Affairs or the Public Health Service.

*Disposal agency* means the Executive agency designated by the Administrator of General Services to dispose of surplus real or personal property.

*Educational activities* mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

*Emergency* includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks that are addressed by the U.S. Department of Homeland Security.

*Executive* means a Government employee with management responsibilities who, in the judgment of the employing agency head or his/her designee, requires preferential assignment of parking privileges.

*Executive agency* means an Executive department specified in section 101 of title 5; a military department specified in section 102 of such title; an independent establishment as defined in section 104(1) of such title; and a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31.

*Federal agency* means 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 or her direction).

*Federal agency buildings manager* means the buildings manager employed by GSA or a Federal agency that has been delegated real property management and operation authority from GSA.

*Federal Government real property services provider* means any Federal Government entity operating under, or subject to, the authorities of the Administrator of General Services that provides real property services to Federal agencies. This definition also includes private sector firms under contract with Federal agencies that deliver real property services to Federal agencies. This definition excludes any entity operating under, or subject to, authorities other than those of the Administrator of General Services.

*Flame-resistant* means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc., classification marking for flammability are deemed to be flame resistant for purposes of this part.

*Foot-candle* is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

*GSA* means the U.S. General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part have been delegated by the Administrator of General Services.

*Highest and best use* means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (*e.g.*, zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

*Indefinite quantity contract* (commonly referred to as *term contract*) provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders with the contractor by activities designated either specifically or by class.

*Industrial property* means any real property and related personal property that has been used or that is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

*Landholding agency* means the Federal agency that has accountability for the property involved. For the purposes of this definition, accountability means that the Federal agency reports the real property on its financial statements and inventory records.

*Landing area* means any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used

for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

*Life cycle cost* is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

*Limited combustible* means rigid materials or assemblies that have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

*Maintenance*, for the purposes of part 102–75, entitled ''Real Property Disposal,'' of this chapter, means the upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment. For the purposes of part 102–74, entitled ''Facility Management,'' of this chapter, maintenance means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. *Ordinary maintenance* means routine recurring work that is incidental to everyday operations; *preventive maintenance* means work programmed at scheduled intervals.

*Management* means the safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

*Nationally recognized standards* encompasses any standard or modification thereof that—

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption; or

(2) Was formulated through consultation by appropriate Federal agencies in a manner that afforded an opportunity for diverse views to be considered.

*No commercial value* means real property, including related personal property, which has no reasonable prospect of producing any disposal revenues.

*Nonprofit organization* means an organization identified in 26 U.S.C. 501(c).

*Normally furnished commercially* means consistent with the level of services provided by a commercial building operator for space of comparable quality and housing tenants with comparable requirements. Service levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

*Occupancy Emergency Organization* means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

*Occupant agency* means an organization that is assigned space in a facility under GSA's custody and control.

*Occupant Emergency Plan* means procedures developed to protect life and property in a specific federally occupied space under stipulated emergency conditions.

*Occupant Emergency Program* means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

*Postal vehicle* means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract with the U.S. Postal Service for the transportation of mail.

*Protection* means the provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against thievery, vandalism, and unauthorized entry.

*Public area* means any area of a building under the control and custody of GSA that is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

*Public body* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

*Public building* means:

(1) Any building that is suitable for office and/or storage space for the use of one or more Federal agencies or mixed-ownership corporations, such as Federal office buildings, post offices, customhouses, courthouses, border inspection facilities, warehouses, and any such building designated by the President. It also includes buildings of this sort that are acquired by the Federal Government under the Administrator's installment-purchase, lease-purchase, and purchase-contract authorities.

(2) Public building does not include buildings:

(i) On the public domain.

(ii) In foreign countries.

(iii) On Indian and native Eskimo properties held in trust by the United States.

(iv) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes.

(v) On or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects.

(vi) On or used in connection with housing and residential projects.

(vii) On military installations.

(viii) On Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(ix) Excluded by the President.

*Real property* means:

(1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except—

(i) The public domain;

(ii) Lands reserved or dedicated for national forest or national park purposes;

(iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved that the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(v) Crops when designated by such agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for

disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency, whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

*Recognized labor organization* means a labor organization recognized under title VII of the Civil Service Reform Act of 1978 (Pub. L. 95–454), as amended, governing labor-management relations.

*Recreational activities* include, but are not limited to, the operations of gymnasiums and related facilities.

*Regional Officer*, within the meaning of part 102–74, subpart D of this chapter, means the Federal official designated to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2). The Federal official may be an employee of GSA or a Federal agency that has delegated authority from GSA to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2).

*Related personal property* means any personal property—

(1) That is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and the removal of which would significantly diminish the economic value of the real property (normally common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property); or

(2) That is determined by the Administrator of General Services to be related to the real property.

*Repairs* means those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

*Ridesharing* means the sharing of the commute to and from work by two or more people, on a continuing basis, regardless of their relationship to each other, in any mode of transportation, including, but not limited to, carpools, vanpools, buspools, and mass transit.

*State* means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

*Unit price agreement* provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

*Unusual hours* means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes time worked by individuals who regularly or frequently work significantly more than 8 hours per day. Unusual hours does not include time worked by shift workers, by those on alternate work schedules, and by those granted exceptions to the normal work schedule (*e.g.*, flex-time).

*Upon approval from GSA* means when an agency either has a delegation of authority document from the Administrator of General Services or written approval from the Administrator or his/her designee before proceeding with a specified action.

*Vanpool* means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip.

*Zonal allocations* means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

### § 102–71.25 Who must comply with GSA's real property policies?

Federal agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these policies.

### § 102–71.30 How must these real property policies be implemented?

Each Federal Government real property services provider must provide services that are in accord with the policies presented in parts 102–71 through 102–82 of this chapter. Also, Federal agencies must make the provisions of any contract with private sector real property services providers conform to the policies in parts 102–71 through 102–82 of this chapter.

### § 102–71.35 Are agencies allowed to deviate from GSA's real property policies?

Yes, see §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of these real property policies.

■ 2. Revise part 102–72 to read as follows:

## PART 102–72—DELEGATION OF AUTHORITY

### Subpart A—General Provisions

Sec.
102–72.5 What is the scope of this part?
102–72.10 What basic policy governs delegation of authority to Federal agencies?

### Subpart B—Delegation of Authority

102–72.15 What criteria must a delegation meet?
102–72.20 Are there limitations on this delegation of authority?
102–72.25 What are the different types of delegations of authority?
102–72.30 What are the different types of delegations related to real estate leasing?
102–72.35 What are the requirements for obtaining an Administrative Contracting Officer (ACO) delegation from GSA?
102–72.40 What are facility management delegations?
102–72.45 What are the different types of delegations related to facility management?
102–72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?
102–72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?
102–72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?
102–72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?
102–72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?
102–72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?
102–72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?
102–72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?

102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?
102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?
102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?
102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

**Authority:** 40 U.S.C. 121(c), (d) and (e).

## Subpart A—General Provisions

### § 102–72.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

### § 102–72.10 What basic policy governs delegation of authority to Federal agencies?

The Administrator of General Services may delegate and may authorize successive redelegations of the real property authority vested in the Administrator to any Federal agency.

## Subpart B—Delegation of Authority

### § 102–72.15 What criteria must a delegation meet?

Delegations must be in the Government's best interest, which means that GSA must evaluate such factors as whether a delegation would be cost effective for the Government in the delivery of space.

### § 102–72.20 Are there limitations on this delegation of authority?

Federal agencies must exercise delegated real property authority and functions according to the parameters described in each delegation of authority document, and Federal agencies may only exercise the authority of the Administrator that is specifically provided within the delegation of authority document.

### § 102–72.25 What are the different types of delegations of authority?

The basic types of GSA Delegations of Authority are—

(a) Delegation of Leasing Authority;

(b) Delegation of Real Property Management and Operation Authority;

(c) Delegation of Individual Repair and Alteration Project Authority;

(d) Delegation of Lease Management Authority (Contracting Office Representative Authority);

(e) Delegation of Administrative Contracting Officer (ACO) Authority;

(f) Delegation of Real Property Disposal Authority;

(g) Security Delegation of Authority; and

(h) Utility Services Delegation of Authority.

### § 102–72.30 What are the different types of delegations related to real estate leasing?

Delegations related to real estate leasing include the following:

(a) Categorical space delegations and agency special purpose space delegations (see § 102–73.140 of this title).

(b) The Administrator of General Services has issued a standing delegation of authority (under a program known as ''Can't Beat GSA Leasing'') to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years and below prospectus level requirements, regardless of geographic location. This delegation includes some conditions Federal agencies must meet when conducting the procurement themselves, such as training in lease contracting and reporting data to GSA.

(c) An ACO delegation, in addition to lease management authority, provides Federal agencies with limited contracting officer authority to perform such duties as paying and withholding lessor rent and modifying lease provisions that do not change the lease term length or the amount of space under lease.

### § 102–72.35 What are the requirements for obtaining an Administrative Contracting Officer (ACO) delegation from GSA?

When Federal agencies do not exercise the delegation of authority for general purpose space mentioned in § 102–72.30(b) of this part, GSA may consider granting an ACO delegation when Federal agencies—

(a) Occupy at least 90 percent of the building's GSA-controlled space, or Federal agencies have the written concurrence of 100 percent of rent-paying occupants covered under the lease; and

(b) Have the technical capability to perform the leasing function.

### § 102–72.40 What are facility management delegations?

Facility management delegations give Executive agencies authority to operate and manage buildings day to day, to perform individual repair and alteration projects, and manage real property leases.

### § 102–72.45 What are the different types of delegations related to facility management?

The principal types of delegations involved in the management of facilities are—

(a) Real property management and operation authority;

(b) Individual repair and alteration project authority; and

(c) Lease management authority (contracting officer representative authority).

### § 102–72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?

With this delegation, Executive agencies have the authority to operate and manage buildings day to day. Delegated functions may include building operations, maintenance, recurring repairs, minor alterations, historic preservation, concessions, and energy management of specified buildings subject to the conditions in the delegation document.

### § 102–72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?

An Executive agency may be delegated real property management and operation authority when it—

(a) Occupies at least 90 percent of the space in the Government-controlled facility, or has the concurrence of 100 percent of the rent-paying occupants to perform these functions; and

(b) Demonstrates that it can perform the delegated real property management and operation responsibilities.

### § 102–72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?

With this delegation of authority, Executive agencies have the responsibility to perform individual repair and alterations projects. Executive agencies are delegated repair and alterations authority for reimbursable space alteration projects up to the simplified acquisition threshold, as specified in the GSA Customer Guide to Real Property.

### § 102–72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?

Executive agencies may be delegated repair and alterations authority for other individual alteration projects when they demonstrate the ability to perform the delegated repair and alterations responsibilities and when such a delegation promotes efficiency and economy.

**§ 102–72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?**

When an Executive agency does not exercise the delegation of authority mentioned in § 102–72.30(b) to lease general purpose space itself, it may be delegated, upon request, lease management authority to manage the administration of one or more lease contracts awarded by GSA.

**§ 102–72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?**

An Executive agency may be delegated lease management authority when it—

(a) Occupies at least 90 percent of the building's GSA-controlled space or has the written concurrence of 100 percent of rent-paying occupants covered under the lease to perform this function; and

(b) Demonstrates the ability to perform the delegated lease management responsibilities.

**§ 102–72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?**

With this delegation, Executive agencies have the authority to utilize and dispose of excess or surplus real and related personal property and to grant approvals and make determinations, subject to the conditions in the delegation document.

**§ 102–72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?**

While disposal delegations to Executive agencies are infrequent, GSA may delegate authority to them based on situations involving certain low-value properties and when they can demonstrate that they have the technical expertise to perform the disposition functions. GSA may grant special delegations of authority to Executive agencies for the utilization and disposal of certain real property through the procedures set forth in part 102–75, subpart F of this chapter.

**§ 102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?**

Law enforcement and related security functions were transferred to the Department of Homeland Security upon its establishment in 2002. The Homeland Security Act authorizes the Secretary of Homeland Security, in consultation with the Administrator of General Services, to issue regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. Notwithstanding the foregoing, GSA retained all powers, functions and authorities necessary for the operation, maintenance, and protection of buildings and grounds owned and occupied by the Federal Government and under the jurisdiction, custody, or control of GSA.

**§ 102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?**

An Executive agency may request a security delegation from GSA by submitting a written request with the detailed basis for the requested delegation to the Assistant Regional Administrator, PBS, in the region where the building is located. A request for multiple buildings in multiple regions should be directed to the Commissioner of PBS. The delegation may be granted where the requesting agency demonstrates a compelling need for the delegated authority and the delegation is not inconsistent with the authorities of any other law enforcement agency.

**§ 102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?**

With this delegation, Executive agencies have the authority to negotiate and execute utility services contracts for periods over one year but not exceeding ten years for their use and benefit. Agencies also have the authority to intervene in utility rate proceedings to represent the consumer interests of the Federal Government, if so provided in the delegation of authority.

**§ 102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?**

Executive agencies may be delegated utility services authority when they have the technical expertise and adequate staffing.

■ 3. Revise part 102–73 to read as follows:

## PART 102–73—REAL ESTATE ACQUISITION

### Subpart A—General Provisions

Sec.
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**Authority:** 40 U.S.C. 121(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 301 note); Sec. 1–201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

## Subpart A—General Provisions

### § 102–73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

### § 102–73.10 What is the basic real estate acquisition policy?

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner.

### § 102–73.15 What real estate acquisition and related services may Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate acquisition and related services, including leasing (with or without purchase options), building and/or site purchase, condemnation, and relocation assistance. For information on the design and construction of Federal facilities, see part 102–76 of this chapter.

## United States Postal Service-Controlled Space

### § 102–73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Yes, after considering the availability of GSA-controlled space and determining that no such space is available to meet its needs, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs, as specified in the ''Agreement Between General Services Administration and the United States Postal Service Covering Real and Personal Property Relationships and Associated Services,'' dated July 1985.

## Locating Federal Facilities

### § 102–73.25 What policies must Executive agencies comply with in locating Federal facilities?

Executive agencies must comply with the location policies in this part and part 102–83 of this chapter.

## Historic Preservation

### § 102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

Prior to acquiring, constructing, or leasing space, Federal agencies must comply with the provisions of section

110(a) of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h–2(a)), regarding the use of historic properties. Federal agencies can find guidance on protecting, enhancing, and preserving historic and cultural property in part 102–78 of this chapter.

### Prospectus Requirements

#### § 102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?

No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. 40 U.S.C. 3307 establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. The current prospectus threshold value for each fiscal year can be accessed by entering GSA's Web site at *http://www.gsa.gov* and then inserting ''prospectus thresholds'' in the search mechanism in the upper right-hand corner of the page.

#### § 102–73.40 What happens if the dollar value of the project exceeds the prospectus threshold?

Projects require approval by the Senate and the House of Representatives if the dollar value of a project exceeds the prospectus threshold. To obtain this approval, the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives. Furthermore, as indicated in § 102–72.30(b), the general purpose lease delegation authority is restricted to below the prospectus threshold, and therefore, GSA must conduct all lease acquisitions over the threshold.

## Subpart B—Acquisition by Lease

#### § 102–73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

Federal agencies may consider leases of privately owned land and buildings only when needs cannot be met satisfactorily in Government-controlled space and one or more of the following conditions exist:

(a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building.

(b) New construction or alteration is unwarranted because demand for space in the community is insufficient, or is indefinite in scope or duration.

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

#### § 102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?

No, Federal agencies possessing independent statutory authority to acquire leased space are not subject to GSA authority and, therefore, may not be subject to the requirements of this part. However, lease prospectus approval requirements of 40 U.S.C. Section 3307 may still apply appropriations to lease of space for public purposes under an agency's independent leasing authority.

#### § 102–73.55 On what basis must Federal agencies acquire leases?

Federal agencies must acquire leases on the most favorable basis to the Federal Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community.

#### § 102–73.60 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, partnership, corporation, or other public or private entity, provided that such lease agreements do not bind the Government for periods in excess of twenty years (40 U.S.C. 585(a)). Federal agencies may not enter into lease agreements with persons who are barred from contracting with the Federal Government (*e.g.*, Members of Congress or debarred or suspended contractors).

#### § 102–73.65 Are there any limitations on leasing certain types of space?

Yes, the limitations on leasing certain types of space are as follows:

(a) In general, Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average annual net rental cost of leasing such space would exceed the prospectus threshold (40 U.S.C. 3307(f)(1)).

(b) However, Federal agencies may lease such space if the Administrator of General Services first determines that leasing such space is necessary to meet requirements that cannot be met in public buildings, and then submits such determination to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives in accordance with 40 U.S.C. 3307(f)(2).

#### § 102–73.70 Are Executive agencies required to acquire leased space by negotiation?

Yes, Executive agencies must acquire leased space by negotiation, except where the sealed bid procedure is required by the Competition in Contracting Act, as amended (CICA) (41 U.S.C. 253(a)).

#### § 102–73.75 What functions must Federal agencies perform with regard to leasing building space?

Federal agencies, upon approval from GSA, must perform all functions of leasing building space, and land incidental thereto, for their use except as provided in this subpart.

#### § 102–73.80 Who is authorized to contact lessor, offerors, or potential offerors concerning space leased or to be leased?

No one, except the Contracting Officer or his or her designee, may contact lessors, offerors, or potential offerors concerning space leased or to be leased for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

#### § 102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?

Yes, upon request, GSA may perform, on a reimbursable basis, all functions of leasing building space, and land incidental thereto, for Federal agencies possessing independent statutory authority to lease space. However, GSA reserves the right to accept or reject reimbursable leasing service requests on a case-by-case basis.

#### § 102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?

Federal agencies must apply the contingent fee policies in 48 CFR 3.4 to all negotiated and sealed bid contracts for the acquisition of real property by lease. Federal agencies must appropriately adapt the representations and covenants required by that subpart for use in leases of real property for Government use.

#### § 102–73.95 How are Federal agencies required to assist GSA?

The heads of Federal agencies must—

(a) Cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space;

(b) Take measures to give GSA early notice of new or changing space requirements;

(c) Seek to economize their requirements for space; and

(d) Continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities that can be carried on elsewhere without excessive costs or significant loss of efficiency.

## Competition in Contracting Act of 1984

### § 102–73.100 Is the Competition in Contracting Act of 1984, as amended (CICA), applicable to lease acquisition?

Yes, Executive agencies must obtain full and open competition among suitable locations meeting minimum Government requirements, except as otherwise provided by CICA, 41 U.S.C. 253.

## National Environmental Policy Act of 1969 (NEPA)

### § 102–73.105 What policies must Federal agencies follow to implement the requirements of NEPA when acquiring real property by lease?

Federal agencies must follow the NEPA policies identified in §§ 102–76.40 and 102–76.45 of this chapter.

## Lease Construction

### § 102–73.110 What rules must Executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

When acquiring leasehold interests in buildings to be constructed for Federal Government use, Executive agencies must—

(a) Establish detailed building specifications before agreeing to a contract that will result in the construction of a building;

(b) Use competitive procedures;

(c) Inspect every building during construction to ensure that the building complies with the Government's specifications;

(d) Evaluate every building after completion of construction to determine that the building complies with the Government's specifications; and

(e) Ensure that any contract that will result in the construction of a building contains provisions permitting the Government to reduce the rent during any period when the building does not comply with the Government's specifications.

## Price Preference for Historic Properties

### § 102–73.115 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?

Yes, Federal agencies must give a price preference to space in historic properties when acquiring leased space using either the lowest price technically acceptable or the best value tradeoff source selection processes.

### § 102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?

Federal agencies must give a price evaluation preference to space in historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

### § 102–73.125 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference to historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

## Leases With Purchase Options

### § 102–73.130 When may Federal agencies consider acquiring leases with purchase options?

Agencies may consider leasing with a purchase option at or below fair market value, consistent with the lease-purchase scoring rules, when one or more of the following conditions exist:

(a) The purchase option offers economic and other advantages to the Government and is consistent with the Government's goals.

(b) The Government is the sole or major tenant of the building, and has a long-term need for the property.

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

## Scoring Rules

### § 102–73.135 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

All Federal agencies must follow the budget scorekeeping rules for leases, capital leases, and lease-purchases identified in appendices A and B of OMB Circular A–11. (For availability, see 5 CFR 1310.3.)

## Delegations of Leasing Authority

### § 102–73.140 When may agencies that do not possess independent leasing authority lease space?

Federal agencies may perform for themselves all functions necessary to acquire leased space in buildings and land incidental thereto when—

(a) The authority may be delegated (see § 102–72.30) on the different types of delegations related to real estate leasing);

(b) The space may be leased for no rental, or for a nominal consideration of $1 per annum, and is limited to terms not to exceed 1 year;

(c) Authority has been requested by an Executive agency and a specific delegation has been granted by the Administrator of General Services;

(d) A categorical delegation has been granted by the Administrator of General Services for space to accommodate particular types of agency activities, such as military recruiting offices or space for certain county level agricultural activities (see § 102–73.155 for a listing of categorical delegations); or

(e) The required space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to occupy such space and is not generally suitable for use by other agencies. Federal agencies must obtain prior approval from the GSA regional office having jurisdiction for the proposed leasing action, before initiating a leasing action involving 2,500 or more square feet of such special purpose space. GSA's approval must be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements. Agency special purpose space delegations can be found in §§ 102–73.170 through 102–73.225.

## Categorical Space Delegations

### § 102–73.145 What is a categorical space delegation?

A categorical space delegation is a standing delegation of authority from the Administrator of General Services to a Federal agency to acquire a type of space identified in § 102–73.155, subject to limitations in this part.

### § 102–73.150 What is the policy for categorical space delegations?

Subject to the limitations cited in §§ 102–73.230 through 102–73.240, all Federal agencies are authorized to acquire the types of space listed in § 102–73.155 and, except where otherwise noted, may lease space for terms, including all options, of up to 20 years.

### § 102–73.155 What types of space can Federal agencies acquire with a categorical space delegation?

Federal agencies can use categorical space delegations to acquire—

(a) Space to house antennas, repeaters, or transmission equipment;

(b) Depots, including, but not limited to, stockpiling depots and torpedo net depots;

(c) Docks, piers, and mooring facilities (including closed storage space required in combination with such facilities);

(d) Fumigation areas;

(e) Garage space (may be leased only on a fiscal year basis);

(f) Greenhouses;

(g) Hangars and other airport operating facilities including, but not limited to, flight preparation space, aircraft storage areas, and repair shops;

(h) Hospitals, including medical clinics;

(i) Housing (temporary), including hotels (does not include quarters obtained pursuant to temporary duty travel or employee relocation);

(j) Laundries;

(k) Quarantine facilities for plants, birds, and other animals;

(l) Ranger stations, *i.e.*, facilities that typically include small offices staffed by one or more uniformed employees, and may include sleeping/family quarters, parking areas, garages, and storage space. Office space within ranger stations is minimal and does not comprise a majority of the space. (May also be referred to as guard stations, information centers, or kiosks);

(m) Recruiting space for the armed forces (lease terms, including all options, limited to 5 years);

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Specialized storage/depot facilities, such as cold storage; self-storage units; and lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage (general purpose warehouse type storage facilities not included); and

(p) Space for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations).

## Special Purpose Space Delegations

### § 102–73.160 What is an agency special purpose space delegation?

An agency special purpose space delegation is a standing delegation of authority from the Administrator of General Services to specific Federal agencies to lease their own special purpose space (identified in §§ 102–73.170 through 102–73.225), subject to limitations in this part.

### § 102–73.165 What is the policy for agency special purpose space delegations?

Subject to the limitations on annual rental amounts, lease terms, and leases on parking spaces cited in §§ 102–73.230 through 102–73.240, the agencies listed below are authorized to acquire special purpose space associated with that agency and, except where otherwise noted, may lease such space for terms, including all options, of up to 20 years. The agencies and types of space subject to special purpose space delegations are specified in §§ 102–73.170 through 102–73.225.

### § 102–73.170 What types of special purpose space may the Department of Agriculture lease?

The Department of Agriculture is delegated the authority to lease the following types of special purpose space:

(a) Cotton classing laboratories (lease terms, including all options, limited to 5 years).

(b) Land (if unimproved, may be leased only on a fiscal year basis).

(c) Miscellaneous storage by cubic foot or weight basis.

(d) Office space when required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports (lease terms, including all options, limited to 5 years).

(e) Space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts.

(f) Space utilized in cooperation with State and local governments or their instrumentalities (extension services) where the cooperating State or local government occupies a portion of the space and pays a portion of the rent.

### § 102–73.175 What types of special purpose space may the Department of Commerce lease?

The Department of Commerce is delegated authority to lease the following types of special purpose space:

(a) Space required by the Census Bureau in connection with conducting the decennial census (lease terms, including all options, limited to 5 years).

(b) Laboratories for testing materials, classified or ordnance devices, calibration of instruments, and atmospheric and oceanic research (lease terms, including all options, limited to 5 years).

(c) Maritime training stations.

(d) Radio stations.

(e) Land (if unimproved, may be leased only on a fiscal year basis).

(f) National Weather Service meteorological facilities.

### § 102–73.180 What types of special purpose space may the Department of Defense lease?

The Department of Defense is delegated authority to lease the following types of special purpose space:

(a) Air Force—Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to airports, including aircraft and warning stations (if unimproved, land may be leased only on a fiscal year basis; for space, lease terms, including all options, limited to 5 years).

(b) Armories.

(c) Film library in the vicinity of Washington, DC.

(d) Mess halls.

(e) Ports of embarkation and debarkation.

(f) Post exchanges.

(g) Postal Concentration Center, Long Island City, NY.

(h) Recreation centers.

(i) Reserve training space.

(j) Service clubs.

(k) Testing laboratories (lease terms, including all options, limited to 5 years).

**§ 102–73.185 What types of special purpose space may the Department of Energy lease?**

The Department of Energy, as the successor to the Atomic Energy Commission, is delegated authority to lease facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

**§ 102–73.190 What types of special purpose space may the Federal Communications Commission lease?**

The Federal Communications Commission is delegated authority to lease monitoring station sites.

**§ 102–73.195 What types of special purpose space may the Department of Health and Human Services lease?**

The Department of Health and Human Services is delegated authority to lease laboratories (lease terms, including all options, limited to 5 years).

**§ 102–73.196 What types of special purpose space may the Department of Homeland Security lease?**

The Department of Homeland Security is delegated authority to lease whatever space its organizational units or components had authority to lease prior to the creation of the Department of Homeland Security, including—

(a) Border patrol offices similar in character and utilization to police stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location (lease terms, including all options limited to 5 years);

(b) Space for the U.S. Coast Guard oceanic unit, Woods Hole, MA; and

(c) Space for the U.S. Coast Guard port security activities.

**§ 102–73.200 What types of special purpose space may the Department of the Interior lease?**

The Department of the Interior is delegated authority to lease the following types of special purpose space:

(a) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, Bureau of Land Management, and the Geological Survey in areas where no other Government agencies are quartered (unimproved land may be leased only on a fiscal year basis).

(b) National Parks/Monuments Visitors Centers consisting primarily of special purpose space (*e.g.*, visitor reception, information, and rest room facilities) and not general office or administrative space.

**§ 102–73.205 What types of special purpose space may the Department of Justice lease?**

The Department of the Justice is delegated authority to lease the following types of special purpose space:

(a) U.S. marshals office in any Alaska location (lease terms, including all options, limited to 5 years).

(b) Space used for storage and maintenance of surveillance vehicles and seized property (lease terms, including all options, limited to 5 years).

(c) Space used for review and custody of records and other evidentiary materials (lease terms, including all options, limited to 5 years).

(d) Space used for trial preparation where space is not available in Federal buildings, Federal courthouses, USPS facilities, or GSA-leased buildings (lease terms limited to not more than 1 year).

**§ 102–73.210 What types of special purpose space may the Office of Thrift Supervision lease?**

The Office of Thrift Supervision is delegated authority to lease space for field offices of Examining Divisions required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings (lease terms, including all options, limited to 5 years).

**§ 102–73.215 What types of special purpose space may the Department of Transportation lease?**

The Department of Transportation is delegated authority to lease the following types of special purpose space (or real property):

(a) Land for the Federal Aviation Administration (FAA) at airports (unimproved land may be leased only on a fiscal year basis).

(b) General purpose office space not exceeding 10,000 square feet for the FAA at airports in buildings under the jurisdiction of public or private airport authorities (lease terms, including all options, limited to 5 years).

**§ 102–73.220 What types of special purpose space may the Department of the Treasury lease?**

The Department of the Treasury is delegated authority to lease the following types of special purpose space:

(a) Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof (if unimproved, land may be leased only on a fiscal year basis; lease term for space, including all options, limited to 5 years).

(b) Aerostat radar facilities necessary for U.S. Custom Service mission activities.

**§ 102–73.225 What types of special purpose space may the Department of Veterans Affairs lease?**

The Department of Veterans Affairs is delegated authority to lease the following types of special purpose space:

(a) Guidance and training centers located at schools and colleges.

(b) Space used for veterans hospitals, including outpatient and medical-related clinics, such as drug, mental health, and alcohol.

## Limitations on the Use of Delegated Authority

**§ 102–73.230 When must Federal agencies submit a prospectus to lease real property?**

In accordance with 40 U.S.C. 3307, Federal agencies must submit a prospectus to the Administrator of General Services for leases involving a net annual rental, excluding services and utilities, in excess of the prospectus threshold provided in 40 U.S.C. 3307. Agencies must be aware that prospectus thresholds are indexed and change each year.

**§ 102–73.235 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?**

Pursuant to GSA's authority to enter into lease agreements contained in 40 U.S.C. 585(a)(2), agencies delegated the authorities outlined herein may enter into leases for the term specified in the delegation. In those cases where agency special purposes space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis.

**§ 102–73.240 What policy must Federal agencies follow to acquire official parking spaces?**

Federal agencies that need parking must utilize available Government-owned or leased facilities. Federal agencies must make inquiries regarding availability of such Government-controlled space to GSA regional offices and document such inquiries. If no suitable Government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract.

## Subpart C—Acquisition by Purchase or Condemnation

### Buildings

#### § 102–73.245 When may Federal agencies consider purchase of buildings?

A Federal agency may consider purchase of buildings on a case-by-case basis if it has landholding authority and when one or more of the following conditions exist:

(a) It is economically more beneficial to own and manage the property.

(b) There is a long-term need for the property.

(c) The property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time.

(d) When otherwise in the best interests of the Government.

#### § 102–73.250 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?

Yes, when purchasing buildings, agencies must comply with the location policies in this part and part 102–83 of this chapter.

#### § 102–73.255 What factors must Executive agencies consider when purchasing sites?

Agencies must locate proposed Federal buildings on sites that are most advantageous to the United States. Executive agencies must consider factors such as whether the site will contribute to economy and efficiency in the construction, maintenance, and operation of the individual building, and how the proposed site relates to the Government's total space needs in the community. Prior to acquiring, constructing, or leasing buildings (or sites for such buildings), Federal agencies must use, to the maximum extent feasible, historic properties available to the agency. In site selections, Executive agencies must consider Executive Order 12072 (August 16, 1978, 43 FR 36869) and Executive Order 13006 (40 U.S.C. 3306 note). In addition, Executive agencies must consider all of the following:

(a) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 102–75, subpart B, of this chapter.

(b) A site adjacent to or in the proximity of an existing Federal building that is well located and is to be retained for long-term occupancy.

(c) The environmental condition of proposed sites prior to purchase. The sites must be free from contamination, unless it is otherwise determined to be in the best interests of the Government to purchase a contaminated site (*e.g.*, reuse of a site under an established ''Brownfields'' program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable location policies in this part and part 102–83 of this chapter.

### Land

#### § 102–73.260 What land acquisition policy must Federal agencies follow?

Federal agencies must follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, which—

(a) Encourages and expedites the acquisition of real property by agreements with owners;

(b) Avoids litigation, including condemnation actions, where possible and relieves congestion in the courts;

(c) Provides for consistent treatment of owners; and

(d) Promotes public confidence in Federal land acquisition practices.

#### § 102–73.265 What actions must Federal agencies take to facilitate land acquisition?

To facilitate land acquisition, Federal agencies must, among other things—

(a) Appraise the real property before starting negotiations and give the owner (or the owner's representative) the opportunity to accompany the appraiser during the inspection;

(b) Establish an amount estimated to be the just compensation before starting negotiations and promptly offer to acquire the property for this full amount;

(c) Try to negotiate with owners on the price;

(d) Pay the agreed purchase price to the property owner, or in the case of a condemnation, deposit payment in the registry of the court, for the benefit of the owner, before requiring the owner to surrender the property; and

(e) Provide property owners (and occupants) at least 90 days' notice of displacement before requiring anyone to move. If a Federal agency permits the owner to keep possession for a short time after acquiring the owner's property, Federal agencies must not charge rent in excess of the property's fair rental value to a short-term occupier.

### Just Compensation

#### § 102–73.270 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?

Yes, Federal agencies must provide the owner with a written statement of this amount and summarize the basis for it. When it is appropriate, Federal agencies must separately state the just compensation for the property to be acquired and damages to the remaining real property.

#### § 102–73.275 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?

The summary statement must—

(a) Identify the real property and the estate or interest the Federal agency is acquiring;

(b) Identify the buildings, structures, and other improvements the Federal agency considers part of the real property for which just compensation is being offered;

(c) State that the Federal agency based the estimate of just compensation on the Government's estimate of the property's fair market value. If only part of a property or less than a full interest is being acquired, Federal agencies must explain how they determined the just compensation for it; and

(d) State that the Government's estimate of just compensation is at least as much as the property's approved appraisal value.

#### § 102–73.280 Where can Federal agencies find guidance on how to appraise the value of properties being acquired by the Federal Government?

The Interagency Land Acquisition Conference has developed, promulgated, and adopted the Uniform Appraisal Standards for Federal Land Acquisitions, sometimes referred to as the ''Yellow Book.'' The Interagency Land Acquisition Conference, established on November 27, 1968, by invitation of the Attorney General, is a voluntary organization composed of the many Federal agencies engaged in the acquisition of real estate for public uses. The ''Yellow Book'' is published by the Appraisal Institute in cooperation with the U.S. Department of Justice and is available in hard copy or on the Department of Justice's internet Web site at *http://www.usdoj.gov/enrd/land-ack/*.

#### § 102–73.285 [Reserved]

#### § 102–73.290 Are there any prohibitions when a Federal agency pays ''just compensation'' to a tenant?

Yes, Federal agencies must not—

(a) Duplicate any payment to the tenant otherwise authorized by law; and

(b) Pay a tenant unless the landowner disclaims all interests in the tenant's improvements. In consideration for any such payment, the tenant must assign, transfer, and release to the Federal

agency all of its right, title, and interest in the improvements. The tenant may reject such payment under this subpart and obtain payment for its property interests according to other sections of applicable law.

### Expenses Incidental to Property Transfer

#### § 102–73.295 What property transfer expenses must Federal agencies cover when acquiring real property?

Federal agencies must—

(a) Reimburse property owners for all reasonable expenses actually incurred for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses needed to convey the property to the Federal Government;

(b) Reimburse property owners for all reasonable expenses actually incurred for penalty costs and other charges to prepay any existing, recorded mortgage that a property owner entered into in good faith and that encumbers the real property;

(c) Reimburse property owners for all reasonable expenses actually incurred for the prorated part of any prepaid real property taxes that cover the period after the Federal Government gets title to the property or effective possession of it, whichever is earlier; and

(d) Whenever possible, directly pay the costs identified in this section, so property owners will not have to pay them and then seek reimbursement from the Government.

### Litigation Expenses

#### § 102–73.300 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

Federal agencies must pay reasonable expenses for attorneys, appraisals, and engineering fees that a property owner incurs because of a condemnation proceeding, if any of the following are true:

(a) The court's final judgment is that the Federal agency cannot acquire the real property by condemnation.

(b) The Federal agency abandons the condemnation proceeding other than under an agreed-on settlement.

(c) The court renders a judgment in the property owner's favor in an inverse condemnation proceeding or the Federal agency agrees to settle such proceeding.

### Relocation Assistance Policy

#### § 102–73.305 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, to eligible owners and tenants of property purchased for use by Federal agencies in accordance with the implementing regulations found in 49 CFR part 24. Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual—

(a) Reasonable moving expenses (in moving himself, his family, and business);

(b) Direct losses of tangible personal property as a result of moving or discontinuing a business;

(c) Reasonable expenses in searching for a replacement business or farm; and

(d) Reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.

■ 4. Revise part 102–74 to read as follows:

## PART 102–74—FACILITY MANAGEMENT

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Sec.
102–74.5 What is the scope of this part?
102–74.10 What is the basic facility management policy?

### Subpart B—Facility Management

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Appendix to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

**Authority:** 40 U.S.C. 121(c); Executive Order 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

## Subpart A—General Provisions

### § 102–74.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

### § 102–74.10 What is the basic facility management policy?

Executive agencies must manage, operate and maintain Government-owned and leased buildings in a manner that provides for quality space and services consistent with their operational needs and accomplishes overall Government objectives. The management, operation and maintenance of buildings and building systems must—

(a) Be cost effective and energy efficient;

(b) Be adequate to meet the agencies' missions;

(c) Meet nationally recognized standards; and

(d) Be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

## Subpart B—Facility Management

### § 102–74.15 What are the facility management responsibilities of occupant agencies?

Occupants of facilities under the custody and control of Federal agencies must—

(a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;

(b) Promptly report all crimes and suspicious circumstances occurring on Federally controlled property first to the regional Federal Protective Service, and as appropriate, the local responding law enforcement authority;

(c) Provide training to employees regarding protection and responses to emergency situations; and

(d) Make recommendations for improving the effectiveness of protection in Federal facilities.

### Occupancy Services

### § 102–74.20 What are occupancy services?

Occupancy services are—

(a) Building services (see § 102–74.35);

(b) Concession services (see § 102–74.40); and

(c) Conservation programs (see § 102–74.100).

### § 102–74.25 What responsibilities do Executive agencies have regarding occupancy services?

Executive agencies, upon approval from GSA, must manage, administer and enforce the requirements of agreements (such as Memoranda of Understanding) and contracts that provide for the delivery of occupancy services.

### § 102–74.30 What standard in providing occupancy services must Executive agencies follow?

Executive agencies must provide occupancy services that substantially conform to nationally recognized standards. As needed, Executive agencies may adopt other standards for buildings and services in Federally controlled facilities to conform to statutory requirements and to implement cost-reduction efforts.

### § 102–74.35 What building services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide—

(a) Building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions; and

(b) Arrangements for raising and lowering the United States flags at appropriate times. In addition, agencies must display P.O.W. and M.I.A. flags at locations specified in 36 U.S.C. 902 on P.O.W./M.I.A. flag display days.

### Concession Services

### § 102–74.40 What are concession services?

Concession services are any food or snack services provided by a Randolph-Sheppard Act vendor, commercial contractor or nonprofit organization (see definition in § 102–71.20 of this chapter), in vending facilities such as—

(a) Vending machines;

(b) Sundry facilities;

(c) Prepackaged facilities;

(d) Snack bars; and

(e) Cafeterias.

### § 102–74.45 When must Federal agencies provide concession services?

Federal agencies, upon approval from GSA, must provide concession services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. Prior to establishing concessions, Federal agencies must ensure that—

(a) The proposed concession will be established and operated in conformance with applicable policies, safety, health and sanitation codes, laws, regulations, etc., and will not contravene the terms of any lease or other contractual arrangement; and

(b) Sufficient funds are legally available to cover all costs for which the Government may be responsible.

**§ 102–74.50 Are Federal agencies required to give blind vendors priority in operating vending facilities?**

With certain exceptions, the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) requires that blind persons licensed by a State licensing agency under the provisions of the Randolph-Sheppard Act be authorized to operate vending facilities on Federal property, including leased buildings. The Department of Education (ED) is responsible for the administration of the Randolph-Sheppard Act as set forth at 34 CFR part 395. The ED designates individual State licensing agencies with program administration responsibility. The Randolph-Sheppard Act and its implementing regulations require that Federal property managers give priority to and notify the State licensing agencies in writing of any opportunity.

**§ 102–74.55 Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?**

Vending facilities are authorized by permit. As set forth in 34 CFR part 395, the Federal property manager approves and signs State licensing agency permits that authorize States to license blind vendors to operate vending facilities (including vending machines) on Federal property.

**§ 102–74.60 Are Federal agencies required to give blind vendors priority in operating cafeterias?**

Yes. Federal agencies are required to give Randolph-Sheppard vendors priority in the operation of cafeterias when the State licensing agency is in the competitive range as set forth at 34 CFR part 395.

**§ 102–74.65 Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?**

They are operated by contract. As set forth at 34 CFR part 395, the Federal property manager contracts with the State licensing agency to license blind vendors to operate cafeterias on Federal property.

**§ 102–74.70 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?**

Commercial vendors and nonprofit organizations must operate vending facilities, including cafeterias, under a contractual arrangement with Federal agencies.

**§ 102–74.75 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?**

No. Section 636 of Public Law 104–52 prohibits the sale of tobacco products in vending machines in Government-owned and leased space. The Administrator of GSA or the head of an Agency may designate areas not subject to the prohibition, if minors are prohibited and reports are made to the appropriate committees of Congress.

**§ 102–74.80 [Reserved]**

**§ 102–74.85 [Reserved]**

**§ 102–74.90 [Reserved]**

**§ 102–74.95 [Reserved]**

## Conservation Programs

**§ 102–74.100 What are conservation programs?**

Conservation programs are programs that improve energy and water efficiency and promote the use of solar and other renewable energy. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water, and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

## Asset Services

**§ 102–74.105 What are asset services?**

Asset services include repairs (other than those minor repairs identified in § 102–74.35(a)), alterations and modernizations for real property assets. Typically, these are the types of repairs and alterations necessary to preserve or enhance the value of the real property asset.

**§ 102–74.110 What asset services must Executive agencies provide?**

Executive agencies, upon approval from GSA, must provide asset services such as repairs (in addition to those minor repairs identified in § 102–74.35(a)), alterations, and modernizations for real property assets. For repairs and alterations projects for which the estimated cost exceeds the prospectus threshold, Federal agencies must follow the prospectus submission and approval policy identified in this part and part 102–73 of this chapter.

**§ 102–74.115 What standard in providing asset services must Executive agencies follow?**

Executive agencies must provide asset services that maintain continuity of Government operations, continue efficient building operations, extend the useful life of buildings and related building systems, and provide a quality workplace environment that enhances employee productivity.

**§ 102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?**

No. A prospectus does not need to be submitted before emergency alterations are performed, but GSA must submit a prospectus as soon as possible after the emergency. Federal agencies must immediately alter a building if the alteration protects people, buildings, or equipment, saves lives, and/or avoids further property damage. Federal agencies can take these actions in an emergency before GSA submits a prospectus on the alterations to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure.

**§ 102–74.125 Are prospectuses required for reimbursable alteration projects?**

A project that is to be financed in whole or in part from funds appropriated to the requesting agency may be performed without a prospectus if—

(a) Payment is made from agency appropriations that are not subject to 40 U.S.C. 3307; and

(b) GSA's portion of the cost, if any, does not exceed the prospectus threshold.

**§ 102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?**

Yes, if requested by a Federal agency, GSA will prepare a prospectus for a reimbursable alteration project.

**§ 102–74.135 Who selects construction and alteration projects that are to be performed?**

The Administrator of General Services selects construction and alteration projects to be performed.

**§ 102–74.140 On what basis does the Administrator select construction and alteration projects?**

The Administrator selects projects based on a continuing investigation and survey of the public building needs of the Federal Government. These projects must be equitably distributed

throughout the United States, with due consideration given to each project's comparative urgency.

**§ 102–74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?**

Federal agencies identifying a need for construction or alteration of a public building must provide information, such as a description of the work, location, estimated maximum cost, and justification to the Administrator of General Services.

**§ 102–74.150 Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?**

The Administrator of General Services must submit prospectuses for public building construction or alteration projects to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for approval.

## Energy Conservation

**§ 102–74.155 What energy conservation policy must Federal agencies follow in the management of facilities?**

Federal agencies must—

(a) Comply with the energy conservation guidelines in 10 CFR part 436 (Federal Energy Management and Planning Programs); and

(b) Observe the energy conservation policies cited in this part.

**§ 102–74.160 What actions must Federal agencies take to promote energy conservation?**

Federal agencies must—

(a) Turn off lights and equipment when not needed;

(b) Not block or impede ventilation; and

(c) Keep windows and other building accesses closed during the heating and cooling seasons.

**§ 102–74.165 What energy standards must Federal agencies follow for existing facilities?**

Existing Federal facilities must meet the energy standards prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North American in ASHRAE/IES Standard 90A–1980, as amended by the Department of Energy. Federal agencies must apply these energy standards where they can be achieved through life cycle, cost effective actions.

**§ 102–74.170 May exceptions to the energy conservation policies in this subpart be granted?**

Yes, the Federal agency buildings manager may grant exceptions to the foregoing policies in this subpart to enable agencies to accomplish their missions more effectively and efficiently.

**§ 102–74.175 Are Government-leased buildings required to conform with the policies in this subpart?**

Yes, all new lease contracts must be in conformance with the policies prescribed in this subpart. Federal agencies must administer existing lease contracts in accordance with these policies to the maximum extent feasible.

**§ 102–74.180 What illumination levels must Federal agencies maintain on Federal facilities?**

Except where special circumstances exist, Federal agencies must maintain illumination levels at—

(a) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (for visually difficult or critical tasks, additional lighting may be authorized by the Federal agency buildings manager);

(b) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(c) 10 foot-candles, but not less than 1 foot-candle, in non-work areas, during working hours (normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas); and

(d) Levels essential for safety and security purposes, including exit signs and exterior lights.

**§ 102–74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?**

Within the limitations of the building systems, Federal agencies must—

(a) Operate heating and cooling systems in the most overall energy efficient and economical manner;

(b) Maintain temperatures to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices;

(c) Set heating temperatures no higher than 55 degrees Fahrenheit during non-working hours;

(d) Not provide air-conditioning during non-working hours, except as necessary to return space temperatures to a suitable level for the beginning of working hours;

(e) Not permit reheating, humidification and simultaneous heating and cooling; and

(f) Operate building systems as necessary during extreme weather conditions to protect the physical condition of the building.

**§ 102–74.190 Are portable heaters, fans and other such devices allowed in Government-controlled facilities?**

Federal agencies are prohibited from operating portable heaters, fans, and other such devices in Government-controlled facilities unless authorized by the Federal agency buildings manager.

**§ 102–74.195 What ventilation policy must Federal agencies follow?**

During working hours in periods of heating and cooling, Federal agencies must provide ventilation in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality, where physically practical. Where not physically practical, Federal agencies must provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329–2305.

**§ 102–74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?**

Federal agencies, upon approval of GSA, must report to the DOE the energy consumption in buildings, facilities, vehicles, and equipment within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy Usage Report DOE F 6200.2 Instructions.

## Ridesharing

**§ 102–74.205 What Federal facility ridesharing policy must Executive agencies follow?**

(a) In accordance with Executive Order 12191, ''Federal Facility Ridesharing Program'' (3 CFR, 1980 Comp., p. 138), Executive agencies must actively promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities to conserve energy, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work.

(b) In accordance with the Federal Employees Clean Air Incentives Act (Public Law 103–172), the Federal

Government is required to take steps to improve the air quality, and to reduce traffic congestion by providing for the establishment of programs that encourage Federal employees to commute to work by means other than single-occupancy motor vehicles.

(c) In accordance with the Transportation Equity Act for the 21st Century (Public Law 105–178), employers, including the Federal Government, are to offer employees transportation fringe benefits.

**§ 102–74.210 What steps must Executive agencies take to promote ridesharing at Federal facilities?**

(a) Under Executive Order 12191, ''Federal Facility Ridesharing Program,'' agencies shall—

(1) Establish an annual ridesharing goal for each facility; and

(2) Cooperate with State and local ridesharing agencies where such agencies exist.

(b) Under the Federal Employees Clean Air Incentives Act (Public Law 103–172), agencies shall—

(1) Issue transit passes or similar vouchers to exchange for transit passes;

(2) Furnish space, facilities, and services to bicyclists;

(3) Provide non-monetary incentives as provided by other provisions of law or other authority; and

(4) Submit biennially to GSA (as directed in House of Representatives Report 103–356, dated November 10, 1993) a report that covers—

(i) Agency programs offered under Public law 103–172;

(ii) Description of each program;

(iii) Extent of employee participation in, and costs to the Government associated with, each program;

(iv) Assessment of environmental or other benefits realized from these programs; and

(v) Other matters that may be appropriate under Public Law 103–172.

(c) In accordance with the Transportation Equity Act for the 21st Century, agencies may (in lieu of or in combination with other commuter benefits) provide fringe benefits to qualified commuters, at no cost, by giving them a monthly pretax payroll deduction to support and encourage the use of mass transportation systems.

**§ 102–74.215 [Reserved]**

**§ 102–74.220 [Reserved]**

**§ 102–74.225 [Reserved]**

## Occupant Emergency Program

**§ 102–74.230 Who is responsible for establishing an occupant emergency program?**

The Designated Official (as defined in § 102–71.20 of this chapter) is responsible for developing, implementing and maintaining an Occupant Emergency Plan (as defined in § 102–71.20 of this chapter). The Designated Official's responsibilities include establishing, staffing and training an Occupant Emergency Organization with agency employees. Federal agencies, upon approval from GSA, must assist in the establishment and maintenance of such plans and organizations.

**§ 102–74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?**

Yes, all occupant agencies of a facility must fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

**§ 102–74.240 What are Federal agencies' occupant emergency responsibilities?**

Federal agencies, upon approval from GSA, must—

(a) Provide emergency program policy guidance;

(b) Review plans and organizations annually;

(c) Assist in training of personnel;

(d) Otherwise provide for the proper administration of Occupant Emergency Programs (as defined in § 102–71.20 of this chapter);

(e) Solicit the assistance of the lessor in the establishment and implementation of plans in leased space; and

(f) Assist the Occupant Emergency Organization (as defined in § 102–71.20 of this chapter) by providing technical personnel qualified in the operation of utility systems and protective equipment.

**§ 102–74.245 Who makes the decision to activate the Occupant Emergency Organization?**

The decision to activate the Occupant Emergency Organization must be made by the Designated Official, or by the designated alternate official. After normal duty hours, the senior Federal official present must represent the Designated Official or his/her alternates and must initiate action to cope with emergencies in accordance with the plans.

**§ 102–74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?**

The Designated Official must make a decision to activate the Occupant Emergency Organization based upon the best available information, including—

(a) An understanding of local tensions;

(b) The sensitivity of target agency(ies);

(c) Previous experience with similar situations;

(d) Advice from the Federal agency buildings manager;

(e) Advice from the appropriate Federal law enforcement official; and

(f) Advice from Federal, State, and local law enforcement agencies.

**§ 102–74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat)?**

The Designated Official must initiate action to evacuate or relocate occupants in accordance with the plan by sounding the fire alarm system or by other appropriate means when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

**§ 102–74.260 What action must the Designated Official initiate when there is advance notice of an emergency?**

The Designated Official must initiate appropriate action according to the plan when there is advance notice of an emergency.

## Parking Facilities

**§ 102–74.265 Who must provide for the regulation and policing of parking facilities?**

Federal agencies, upon approval from GSA, must provide for any necessary regulation and policing of parking facilities, which may include—

(a) The issuance of traffic rules and regulations;

(b) The installation of signs and markings for traffic control (Signs and markings must conform with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(c) The issuance of citations for parking violations; and

(d) The immobilization or removal of illegally parked vehicles.

**§ 102–74.270 Are vehicles required to display parking permits in parking facilities?**

When the use of parking space is controlled as in § 102–74.265, all privately owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available spaces regularly exceeds the demand for such spaces.

**§ 102–74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate and police parking facilities?**

Yes, Federal agencies, upon approval from GSA, may authorize lessors or parking management contractors to manage, regulate and police parking facilities.

**§ 102–74.280 Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?**

Federal agencies must not permit privately owned vehicles converted for propane carburetion to enter underground parking facilities unless the owner provides to the occupant agency and the Federal agency buildings manager the installer's certification that the installation methods and equipment comply with National Fire Protection Association (NFPA) Standard No. 58.

**§ 102–74.285 How must Federal agencies assign priority to parking spaces in controlled areas?**

Federal agencies must reserve official parking spaces, in the following order of priority, for—

(a) Official postal vehicles at buildings containing the U.S. Postal Service's mailing operations;

(b) Federally owned vehicles used to apprehend criminals, fight fires and handle other emergencies;

(c) Private vehicles owned by Members of Congress (but not their staffs);

(d) Private vehicles owned by Federal judges (appointed under Article III of the Constitution), which may be parked in those spaces assigned for the use of the Court, with priority for them set by the Administrative Office of the U.S. Courts;

(e) Other Federally owned and leased vehicles, including those in motor pools or assigned for general use;

(f) Service vehicles, vehicles used in child care center operations, and vehicles of patrons and visitors (Federal agencies must allocate parking for disabled visitors whenever an agency's mission requires visitor parking); and

(g) Private vehicles owned by employees, using spaces not needed for official business.

However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or equitable, taking into account the priority for official parking set forth in this section.

**§ 102–74.290 May Federal agencies allow employees to use parking spaces not required for official needs?**

Yes, Federal agencies may allow employees to use parking spaces not required for official needs.

**§ 102–74.295 Who determines the number of employee parking spaces for each facility?**

The Federal agency buildings manager must determine the total number of spaces available for employee parking. Typically, Federal agencies must make a separate determination for each parking facility. However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or more equitably available.

**§ 102–74.300 How must space available for employee parking be allocated among occupant agencies?**

The Federal agency buildings manager must allocate space available for employee parking among occupant agencies on an equitable basis, such as by allocating such parking in proportion to each agency's share of building space, office space or total employee population, as appropriate. In certain cases, Federal agencies may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper parking allocations among the occupant agencies.

**§ 102–74.305 How must Federal agencies assign available parking spaces to their employees?**

Federal agencies must assign available parking spaces to their employees using the following order of priority:

(a) Severely disabled employees (see definition in § 102–71.20 of this chapter).

(b) Executive personnel and persons who work unusual hours.

(c) Vanpool/carpool vehicles.

(d) Privately owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.

(e) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

**§ 102–74.310 What measures must Federal agencies take to improve the utilization of parking facilities?**

Federal agencies must take all feasible measures to improve the utilization of parking facilities, including—

(a) The conducting of surveys and studies;

(b) The periodic review of parking space allocations;

(c) The dissemination of parking information to occupant agencies;

(d) The implementation of parking incentives that promote ridesharing;

(e) The use of stack parking practices, where appropriate; and

(f) The employment of parking management contractors and concessionaires, where appropriate.

## Smoking

**§ 102–74.315 What is the smoking policy for Federal facilities?**

Pursuant to Executive Order 13058, ''Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace'' (3 CFR, 1997 Comp., p. 216), it is the policy of the Executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the Executive branch of the Federal Government, and in any outdoor areas under Executive branch control in front of air intake ducts.

**§ 102–74.320 Are there any exceptions to this smoking policy for Federal facilities?**

Yes, this smoking policy does not apply in—

(a) Designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials must not require workers to enter such areas during business hours while smoking is ongoing;

(b) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(c) Portions of Federally owned buildings leased, rented or otherwise provided in their entirety to non-Federal parties;

(d) Places of employment in the private sector or in other non-Federal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(e) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

**§ 102–74.325 Who has the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas?**

Agency heads have the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas. In exercising this responsibility, agency heads will give appropriate consideration to the views of the employees affected and/or their representatives and are to take into consideration the health issues involved. Nothing in this section precludes an agency from establishing more stringent guidelines. Agencies in multi-tenant buildings are encouraged to work together to identify designated smoking areas.

**§ 102–74.330 Who must evaluate the need to restrict smoking at doorways and in courtyards?**

Agency heads must evaluate the need to restrict smoking at doorways and in courtyards under Executive branch control to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

**§ 102–74.335 Who is responsible for monitoring and controlling areas designated for smoking and for identifying these areas with proper signage?**

Agency heads are responsible for monitoring and controlling areas designated for smoking and identifying these areas with proper signage. Suitable uniform signs reading ''Designated Smoking Area'' must be furnished and installed by the occupant agency.

**§ 102–74.340 Who is responsible for signs on or near building entrance doors?**

Federal agency buildings managers must furnish and install suitable, uniform signs reading ''No Smoking Except in Designated Areas'' on or near entrance doors of buildings subject to this section. It is not necessary to display a sign in every room of each building.

**§ 102–74.345 Does the smoking policy in this part apply to the Judicial branch?**

This smoking policy applies to the Judicial branch when it occupies space in buildings controlled by the Executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as indicated in § 102–74.320(e).

**§ 102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?**

Yes. Where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) prior to implementing this section. In all other cases, agencies may consult directly with employees.

### Accident and Fire Prevention

**§ 102–74.355 With what accident and fire prevention standards must Federal facilities comply?**

To the maximum extent feasible, Federal agencies must manage facilities in accordance with the accident and fire prevention requirements identified in § 102–80.80 of this chapter.

**§ 102–74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?**

Each occupant agency must—

(a) Participate in at least one fire drill per year;

(b) Maintain a neat and orderly facility to minimize the risk of accidental injuries and fires;

(c) Keep all exits, accesses to exits and accesses to emergency equipment clear at all times;

(d) Not bring hazardous, explosive or combustible materials into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided;

(e) Use only draperies, curtains or other hanging materials that are made of non-combustible or flame-resistant fabric;

(f) Use only freestanding partitions and space dividers that are limited combustible, and fabric coverings that are flame resistant;

(g) Cooperate with GSA to develop and maintain fire prevention programs that provide the maximum safety for the occupants;

(h) Train employees to use protective equipment and educate employees to take appropriate fire safety precautions in their work;

(i) Keep facilities in the safest condition practicable, and conduct periodic inspections in accordance with Executive Order 12196 and 29 CFR part 1960;

(j) Immediately report accidents involving personal injury or property damage, which result from building system or maintenance deficiencies, to the Federal agency building manager; and

(k) Appoint a safety, health and fire protection liaison to represent the occupant agency with GSA.

## Subpart C—Conduct on Federal Property

### Applicability

**§ 102–74.365 To whom does this subpart apply?**

The rules in this subpart apply to all property under the authority of GSA and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.

### Inspection

**§ 102–74.370 What items are subject to inspection by Federal agencies?**

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

### Admission to Property

**§ 102–74.375 What is the policy on admitting persons to Government property?**

Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the

property or the area. The designated official is defined in § 102–71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

## Preservation of Property

### § 102–74.380 What is the policy concerning the preservation of property?

All persons entering in or on Federal property are prohibited from—

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things; or

(e) Throwing articles of any kind from or at a building or climbing upon statues, fountains or any part of the building.

## Conformity With Signs and Directions

### § 102–74.385 What is the policy concerning conformity with official signs and directions?

Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

## Disturbances

### § 102–74.390 What is the policy concerning disturbances?

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

## Gambling

### § 102–74.395 What is the policy concerning gambling?

(a) Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This provision is not intended to prohibit prize drawings for personal property at otherwise permitted functions on Federal property, provided that the game or drawing does not constitute gambling per se. Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize.

## Narcotics and Other Drugs

### § 102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

## Alcoholic Beverages

### § 102–74.405 What is the policy concerning the use of alcoholic beverages?

Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

## Soliciting, Vending and Debt Collection

### § 102–74.410 What is the policy concerning soliciting, vending and debt collection?

All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for—

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled ''Solicitation Of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations,'' and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

## Posting and Distributing Materials

### § 102–74.415 What is the policy for posting and distributing materials?

All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, as mandated by Section 636 of Public Law 104–52;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this

section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

### Photographs for News, Advertising or Commercial Purposes

#### § 102–74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

### Dogs and Other Animals

#### § 102–74.425 What is the policy concerning dogs and other animals on Federal property?

No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

### Breastfeeding

#### § 102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

Yes. Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

### Vehicular and Pedestrian Traffic

#### § 102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

### Explosives

#### § 102–74.435 What is the policy concerning explosives on Federal property?

No person entering or while on Federal property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

### Weapons

#### § 102–74.440 What is the policy concerning weapons on Federal property?

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

### Nondiscrimination

#### § 102–74.445 What is the policy concerning discrimination on Federal property?

Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

### Penalties

#### § 102–74.450 What are the penalties for violating any rule or regulation in this subpart?

A person found guilty of violating any rule or regulation in this subpart while on any property under the charge and control of GSA shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

### Impact on Other Laws or Regulations

#### § 102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

## Subpart D—Occasional Use of Public Buildings

#### § 102–74.460 What is the scope of this subpart?

This subpart establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2).

### Application for Permit

#### § 102–74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

Yes, any person or organization wishing to use a public area must file an application for a permit from the Federal agency buildings manager.

#### § 102–74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

Applicants must submit the following information:

(a) Their full names, mailing addresses, and telephone numbers.

(b) The organization sponsoring the proposed activity.

(c) The individual(s) responsible for supervising the activity.

(d) Documentation showing that the applicant has authority to represent the sponsoring organization.

(e) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

#### § 102–74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

Yes, if an applicant proposes to use a public area to solicit funds, the applicant must certify, in writing, that—

(a) The applicant is a representative of and will be soliciting funds for the sole benefit of a religion or religious group; or

(b) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still pending.

## Permits

### § 102–74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?

Federal agencies must issue permits within 10 working days following the receipt of the completed applications, unless the permit is disapproved in accordance with § 102–74.500.

### § 102–74.485 Is there any limitation on the length of time of a permit?

Yes, a permit may not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the Regional Officer (as defined in § 102–71.20 of this chapter). After the expiration of a permit, Federal agencies may issue a new permit upon submission of a new application. In such a case, applicants may incorporate by reference all required information filed with the prior application.

### § 102–74.490 What if more than one permit is requested for the same area and time?

Federal agencies will issue permits on a first-come, first-served, basis when more than one permit is requested for the same area and times.

### § 102–74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?

Before approving a permit application, Federal agencies must coordinate with their law enforcement organization if a permit involves demonstrations or activities that may lead to civil disturbances.

## Disapproval of Applications or Cancellation of Permits

### § 102–74.500 Can Federal agencies disapprove permit applications or cancel issued permits?

Yes, Federal agencies may disapprove any permit application or cancel an issued permit if—

(a) The applicant has failed to submit all information required under §§ 102–74.470 and 102–74.475, or has falsified such information;

(b) The proposed use is a commercial activity as defined in § 102–71.20 of this chapter;

(c) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(d) The proposed use is intended to influence or impede any pending judicial proceeding;

(e) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461–65; or

(f) The proposed use violates the prohibition against political solicitations in 18 U.S.C. 607.

### § 102–74.505 What action must Federal agencies take after disapproving an application or canceling an issued permit?

Upon disapproving an application or canceling a permit, Federal agencies must promptly—

(a) Notify the applicant or permittee of the reasons for the action; and

(b) Inform the applicant or permittee of his/her appeal rights under § 102–74.510.

## Appeals

### § 102–74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?

A person or organization may appeal the disapproval of an application or cancellation of an issued permit by notifying the Regional Officer (as defined in § 102–71.20 of this chapter), in writing, of the intent to appeal within 5 calendar days of the notification of disapproval or cancellation.

### § 102–74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?

Yes, during the appeal process, the affected person or organization and the Federal agency buildings manager will have an opportunity to state their positions on the issues, both verbally and in writing.

### § 102–74.520 How much time does the Regional Officer have to affirm or reverse the Federal agency buildings manager's decision after receiving the notification of appeal from the affected person or organization?

The Regional Officer must affirm or reverse the Federal agency buildings manager's decision, based on the information submitted, within 10 calendar days of the date on which the Regional Officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The Regional Officer will promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefor.

## Schedule of Use

### § 102–74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair and construction?

Yes, Federal agencies may reserve certain time periods for use of public areas—

(a) For official Government business; or

(b) For maintenance, repair, and construction.

## Hours of Use

### § 102–74.530 When may public areas be used?

Permittees may use public areas during or after regular working hours of Federal agencies, provided that such uses will not interfere with Government business. When public areas are used by permittees after normal working hours, Federal agencies must lock, barricade or identify by signs, as appropriate, all adjacent areas not approved for such use to restrict permittees' activities to approved areas.

## Services and Costs

### § 102–74.535 What items may Federal agencies provide to permittees free of charge?

Federal agencies may provide to permittees at no cost—

(a) Space; and

(b) Services normally provided at the building in question during normal hours of building operation, such as security, cleaning, heating, ventilation, and air-conditioning. The Regional Officer must approve an applicant's request to provide its own services, such as security and cleaning, prior to permit approval.

### § 102–74.540 What are the items for which permittees must reimburse Federal agencies?

Permittees must reimburse Federal agencies for services over and above those normally provided during normal business hours. Federal agencies may provide the services free of charge if the cost is insignificant and if it is in the public interest.

### § 102–74.545 May permittees make alterations to the public areas?

Permittees must not make alterations to public areas, except with the prior written approval of the Federal agency buildings manager. Federal agencies must not approve such alterations unless the Federal agency determines that the proposed alterations to a building should be made to encourage

and aid in the proposed use. Permittees making alterations must ensure the safety of users and prevent damage to property.

### § 102–74.550 What items are permittees responsible for furnishing?

Permittees are responsible for furnishing items such as tickets, audio-visual equipment, and other items that are necessary for the proposed use.

## Conduct

### § 102–74.555 What rules of conduct must all permittees observe while on Federal property?

Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in subpart C of this part. In addition, a permittee must—

(a) Not misrepresent his or her identity to the public;

(b) Not conduct any activities in a misleading or fraudulent manner;

(c) Not discriminate on the basis of race, creed, religion, age, color, disability, sex, or national origin in conducting activities;

(d) Not distribute any item, nor post or otherwise affix any item, for which prior written approval under § 102–74.415 has not been obtained;

(e) Not leave leaflets or other materials unattended on the property;

(f) Not engage in activities that would interfere with the preferences afforded blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107); and

(g) Display identification badges while on Federal property, if engaging in the solicitation of funds as authorized by § 102–74.475. Each badge must indicate the permittee's name, address, telephone number, and organization.

## Non-affiliation With the Government

### § 102–74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?

Yes, Federal agencies reserve the right to advise the public through signs or announcements of the presence of any permittees and of their non-affiliation with the Federal Government.

## Subpart E—Installing, Repairing, and Replacing Sidewalks

### § 102–74.565 What is the scope of this subpart?

In accordance with 40 U.S.C. 589, Federal agencies must comply with the real property policies in this subpart governing the installation, repair and replacement of sidewalks around buildings, installations, properties, or grounds under the control of Executive agencies and owned by the United States.

### § 102–74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?

No, the Federal Government must fund the cost of installing, repairing, and replacing sidewalks. Funds appropriated to the agency for installation, repair, and maintenance, generally, must be available for expenditure to accomplish the purposes of this subpart.

### § 102–74.575 How do Federal agencies arrange for work on sidewalks?

Upon approval from GSA, Federal agencies may—

(a) Authorize the appropriate State or local government to install, repair and replace sidewalks, or arrange for this work, and reimburse them for this work; or

(b) Contract or otherwise arrange and pay directly for installing, repairing and/or replacing sidewalks.

### § 102–74.580 Who decides when to replace a sidewalk?

Federal agencies, giving due consideration to State and local standards and specifications for sidewalks, decide when to install, repair or replace a sidewalk. However, Federal agencies may prescribe other standards and specifications for sidewalks whenever necessary to achieve architectural harmony and maintain facility security.

## Subpart F—Telework

### § 102–74.585 What Federal facility telework policy must Executive agencies follow?

Executive agencies must follow these telework policies:

(a) In accordance with Section 359 of Public Law 106–346, each Executive agency must establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance. Public 106–346 became effective on October 23, 2000, and required the Director of the Office of Personnel Management (OPM) to ensure the application and implementation of Section 359 to 25 percent of the Federal workforce by April 2001, and to an additional 25 percent of such workforce each year thereafter. Thus, the law provides that its requirements must be applied to 100 percent of the Federal workforce by April 2004.

(b) In accordance with 40 U.S.C. 587, when considering whether to acquire any space, quarters, buildings, or other facilities for use by employees of any Executive agency, the head of that agency shall consider whether the need for the facilities can be met using alternative workplace arrangements.

### § 102–74.590 What steps must agencies take to implement these laws and policies?

(a) As interpreted by OPM Memorandum to agencies (February 9, 2001), Public Law 106–346 instructs Federal agencies to—

(1) Review telework barriers, act to remove them, and increase actual participation;

(2) Establish eligibility criteria; and

(3) Subject to any applicable agency policies or bargaining obligations, allow employees who meet the criteria and want to participate the opportunity if they are satisfactory performers.

(b) 40 U.S.C. 587 requires agencies considering the acquisition of facilities for use by Federal employees to consider whether the facility need can be met using alternative workplace arrangements, such as telecommuting, hoteling, virtual offices, and other distributive work arrangements. If the agency needs assistance in this investigation and/or subsequent application of alternative workplace arrangements, GSA will provide guidance, assistance, and oversight, as needed, regarding establishment and operation of alternative workplace arrangements.

(c) Agencies evaluating alternative workplace arrangements should also make these evaluations in coordination with Integrated Workplace policies and strategies. See § 102–79.110.

### § 102–74.595 How can agencies obtain guidance, assistance, and oversight regarding alternative workplace arrangements from GSA?

Agencies may request assistance from the GSA/PBS regional office responsible for providing space in the geographic area under consideration.

### § 102–74.600 Should Federal agencies utilize telework centers?

Yes. In accordance with Public Law 107–217 (August 21, 2002), each of the following departments and agencies, in each fiscal year, must make at least $50,000 available from amounts provided for salaries and expenses for carrying out a flexiplace work telecommuting program (*i.e.*, to pay telework center program user fees):

(a) Department of Agriculture.

(b) Department of Commerce.

(c) Department of Defense.

(d) Department of Education.

(e) Department of Energy.

(f) Department of Health and Human Services.

(g) Department of Housing and Urban Development.

(h) Department of the Interior.

(i) Department of Justice.

(j) Department of Labor.

(k) Department of State.

(l) Department of Transportation.

(m) Department of the Treasury.

(n) Department of Veterans Affairs.

(o) Environmental Protection Agency.

(p) General Services Administration.

(q) Office of Personnel Management.

(r) Small Business Administration.

(s) Social Security Administration.

(t) United States Postal Service.

## Appendix to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

### Federal Management Regulations

### Title 41, Code of Federal Regulations, Part 102–74, Subpart C

*Applicability (41 CFR 102–74.365).* The rules in this subpart apply to all property under the authority of the U.S. General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to part 102–74 at each public entrance to each Federal facility.

*Inspection (41 CFR 102–74.370).* Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

*Admission to Property (41 CFR 102–74.375).* Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

*Preservation of Property (41 CFR 102–74.380).* All persons entering in or on Federal property are prohibited from—

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things; and

(e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building.

*Conformity with Signs and Directions (41 CFR 102–74.385).* Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

*Disturbances (41 CFR 102–74.390).* All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

*Gambling (41 CFR 102–74.395).* Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

(a) Participating in games for money or other personal property;

(b) Operating gambling devices;

(c) Conducting a lottery or pool; or

(d) Selling or purchasing numbers tickets.

*Narcotics and Other Drugs (41 CFR 102–74.400).* Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

*Alcoholic Beverages (41 CFR 102–74.405).* Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

*Soliciting, Vending and Debt Collection (41 CFR 102–74.410).* All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations; vending merchandise of all kinds; displaying or distributing commercial advertising, or collecting private debts, except for—

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled ''Solicitation of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations,'' and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Public Law 95–454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 581(h)). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

*Posting and Distributing Materials (41 CFR 102–74.415).* All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104–52, Section 636;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills, or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

*Photographs for News, Advertising, or Commercial Purposes (41 CFR 102–74.420).*

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

*Dogs and Other Animals (41 CFR 102–74.425).* No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

*Breastfeeding (41 CFR 102–74.426).* Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

*Vehicular and Pedestrian Traffic (41 CFR 102–74.430).* All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

*Explosives (41 CFR 102–74.435).* No person entering or while on property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

*Weapons (41 CFR 102–74.440).* Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

*Nondiscrimination (41 CFR 102–74.445).* Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

*Penalties (41 CFR 102–74.450).* A person found guilty of violating any rule or regulation in subpart C of this part while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

*Impact on Other Laws or Regulations (41 CFR 102–74.455).* No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

**Warning—Weapons Prohibited**

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

■ 5. Revise part 102–75 to read as follows:

## PART 102–75—REAL PROPERTY DISPOSAL

### Subpart A—General Provisions

Sec.
102–76.5 What is the scope of this part?
102–75.10 What basic real property disposal policy governs disposal agencies?

**Real Property Disposal Services**

102–75.15 What real property disposal services must disposal agencies provide under a delegation of authority from GSA?
102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

### Subpart B—Utilization of Excess Real Property

102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?
102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?
102–75.35 [Reserved]

**Standards**

102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?
102–75.45 What does the term ''Not utilized'' mean?
102–75.50 What does the term ''Underutilized'' mean?
102–75.55 What does the term ''Not being put to optimum use'' mean?

**Guidelines**

102–75.60 What are landholding agencies' responsibilities concerning real property surveys?
102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?
102–75.70 Are their any exceptions to this notification policy?
102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?
102–75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?
102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?
102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?
102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?

**Land Withdrawn or Reserved From the Public Domain**

102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?
102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

**Transfers Under Other Laws**

102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?

**Reporting of Excess Real Property**

102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?
102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

**Title Report**

102–75.125 What information must agencies include in the title report?
102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include on the title report?
102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?

**Other Necessary Information**

102–75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

**Examination for Acceptability**

102–75.145 Is GSA required to review each report of excess?
102–75.150 What happens when GSA determines that the report of excess is adequate?
102–75.155 What happens if GSA determines that the report of excess is insufficient?

**Designation as Personal Property**

102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?
102–75.165 Should related personal property be designated real or personal property for disposition purposes?
102–75.170 What happens to the related personal property in a structure scheduled for demolition?

**Transfers**

102–75.175 What are GSA's responsibilities regarding transfer requests?
102–75.180 May landholding agencies transfer excess real property without notifying GSA?
102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?
102–75.190 What amount must the transferee agency pay for the transfer of excess real property?
102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?
102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?
102–75.205 Are transfers ever made without reimbursement by the transferee agency?
102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?
102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?
102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?
102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?
102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?
102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

**Temporary Utilization**

102–75.240 May excess real property be temporarily assigned/reassigned?

**Non-Federal Interim Use of Excess Property**

102–75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?

**Subpart C—Surplus Real Property Disposal**

102–75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?
102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?
102–75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?
102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

**Applicability of Antitrust Laws**

102–75.270 Must antitrust laws be considered when disposing of property?
102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?
102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?
102–75.285 Can a disposal agency dispose of real property to a private interest specified in § 102–75.270 before advice is received from the Attorney General?

**Disposals Under Other Laws**

102–75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?

**Credit Disposals**

102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

**Designation of Disposal Agencies**

102–75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?
102–75.297 Are there any exceptions to when landholding agencies may serve as the disposal agency?
102–75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in § 102–75.296?
102–75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

**Appraisal**

102–75.300 Are appraisals required for all real property disposal transactions?
102–75.305 What type of appraisal value must be obtained for real property disposal transactions?
102–75.310 Who must agencies use to appraise the real property?
102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?
102–75.320 Does appraisal information need to be kept confidential?

**Inspection**

102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

**Submission of Offers To Purchase or Lease**

102–75.330 What form must all offers to purchase or lease be in?

**Provisions Relating to Asbestos**

102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

**Provisions Relating to Hazardous Substance Activity**

102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?
102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

**Public Benefit Conveyances**

102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?
102–75.351 May the disposal agency waive screening for public benefit conveyances?
102–75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?
102–75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and the conveyance document?

**Power Transmission Lines**

102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?
102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

**Property for Public Airports**

102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?
102–75.390 What does the term ''surplus airport property'' mean?
102–75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or

tax-supported institution for a public airport?
102–75.400 Is industrial property located on an airport also considered to be ''airport property''?
102–75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?
102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?
102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?
102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?
102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?
102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?
102–75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970) apply to the transfer of airports to State and local agencies?

**Property for Use as Historic Monuments**

102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?
102–75.445 Who can convey surplus real and related personal property for historic monument use?
102–75.450 What type of property is suitable or desirable for use as a historic monument?
102–75.455 May historic monuments be used for revenue-producing activities?
102–75.460 What information must disposal agencies furnish eligible public agencies?
102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?
102–75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?
102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?
102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?
102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?

**Property for Educational and Public Health Purposes**

102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?
102–75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?
102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?
102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?
102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?
102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?
102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?
102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?
102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?
102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?
102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?

**Property for Providing Self-Help Housing or Housing Assistance**

102–75.550 What does ''self-help housing or housing assistance'' mean?
102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?
102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?
102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?
102–75.570 What happens if the disposal agency does not approve the assignment recommendation?
102–75.575 Who notifies nonprofit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?
102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?
102–75.590 What does the assignment recommendation contain?
102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?
102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?
102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?
102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?
102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?
102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?

**Property for Use as Public Park or Recreation Areas**

102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?
102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?
102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?
102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?
102–75.650 When must DOI request assignment of the property?
102–75.655 What does the assignment recommendation contain?

102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?
102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?
102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?
102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?
102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?
102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?
102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

**Property for Displaced Persons**

102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?
102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?
102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?
102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?
102–75.715 When can a Federal agency request transfer of the property to the selected State agency?
102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?
102–75.725 What does the transfer request contain?
102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?
102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?
102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?
102–75.745 What happens if the property transfer request is not approved by the disposal agency?

**Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes**

102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?
102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?
102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?
102–75.765 What does the term ''law enforcement'' mean?
102–75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?
102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?
102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?
102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?
102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?
102–75.800 What information must be included in the deed of conveyance?
102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?
102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?
102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

**Property for Port Facility Use**

102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?
102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?
102–75.830 What does the surplus notice contain?
102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?
102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?
102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?
102–75.855 What happens if DOT does not submit an assignment recommendation?
102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?
102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?
102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?
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102–75.885 What are the disposal agency's responsibilities concerning negotiated sales?
102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?
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102–75.910 Are there any exceptions to this policy of preparing explanatory statements?
102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?
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102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?
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102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?
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102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?
102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?
102–75.1085 When using a delegation of real property disposal authority under this subpart, is the USDA required to report excess property to GSA?
102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?

**Delegation to the Department of the Interior**

102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?
102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?
102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?

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102–75.1115 Are there any limitations or restrictions on this delegation of authority?
102–75.1120 Does the property have to be Federally screened?
102–75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?
102–75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?
102–75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

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102–75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?
102–75.1145 What action must the Federal agency receiving an offer of a conditional gift take?
102–75.1150 What happens to the gift if GSA determines it to be acceptable?
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**Definitions**

102–75.1160 What definitions apply to this subpart?

**Applicability**

102–75.1165 What is the applicability of this subpart?

**Collecting the Information**

102–75.1170 How will information be collected?

**Suitability Determination**

102–75.1175 Who issues the suitability determination?

**Real Property Reported Excess to GSA**

102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

**Suitability Criteria**

102–75.1185 What are suitability criteria?

**Determination of Availability**

102–75.1190 What is the policy concerning determination of availability statements?

**Public Notice of Determination**

102–75.1195 What is the policy concerning making public the notice of determination?

**Application Process**

102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

**Action on Approved Applications**

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102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

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**Subpart I—Screening Excess Federal Real Property**

102–75.1220 How do landholding agencies find out if excess Federal real property is available?

102–75.1225 What details are provided in the ''Notice of Availability''?

102–75.1230 How long does an agency have to indicate its interest in the property?

102–75.1235 Where should an agency send its written response to the ''Notice of Availability''?

102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA's ''Notice of Availability''?

102–75.1245 What happens after the landholding agency properly responds to a ''Notice of Availability''?

102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?

102–75.1255 What happens when more than one agency has a valid interest in the property?

102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?

102–75.1265 Are extensions granted to the Federal screening and response timeframes?

102–75.1270 How does an agency request a transfer of Federal real property?

102–75.1275 Does a requesting agency have to pay for excess real property?

102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?

102–75.1285 How does GSA transfer excess real property to the requesting agency?

102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?

**Authority:** 40 U.S.C. 121(c), 521–523, 541–559; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

## Subpart A—General Provisions

### § 102–75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. Federal agencies with authority to dispose of real property under Subchapter III of Chapter 5 of Title 40 of the United States Code will be referred to as ''disposal agencies'' in this part. Except in rare instances where GSA delegates disposal authority to a Federal agency, the ''disposal agency'' as used in this part refers to GSA.

### § 102–75.10 What basic real property disposal policy governs disposal agencies?

Disposal agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must survey the real property under their custody or control to identify property that is not utilized, underutilized, or not being put to optimum use. Disposal agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

### Real Property Disposal Services

### § 102–75.15 What real property disposal services must agencies provide under a delegation of authority from GSA?

Disposal agencies must provide real property disposal services for real property assets under their custody and control, such as the utilization of excess property, surveys, and the disposal of surplus property, which includes public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

### § 102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

Federal agencies with independent disposal authority are encouraged to obtain utilization, disposal, and related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that they can remain focused on their core mission.

## Subpart B—Utilization of Excess Real Property

### § 102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?

Landholding agencies' responsibilities concerning the utilization of excess property are to—

(a) Achieve maximum use of their real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;

(b) Increase the identification and reporting of their excess real property; and

(c) Fulfill its needs for real property, so far as practicable, by utilization of real property determined excess by other agencies, pursuant to the provision of this part, before it purchases non-Federal real property.

### § 102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?

Disposal agencies' responsibilities concerning the utilization of excess property are to—

(a) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia; and

(b) Resolve conflicting requests for transferring real property that the involved agencies cannot resolve.

### § 102–75.35 [Reserved]

### Standards

### § 102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?

Each Executive agency must identify unneeded Federal property using the following standards:

(a) Not utilized.

(b) Underutilized.

(c) Not being put to optimum use.

**§ 102–75.45 What does the term ''Not utilized'' mean?**

Not utilized means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable Executive agency, or occupied in caretaker status only.

**§ 102–75.50 What does the term ''Underutilized'' mean?**

Underutilized means an entire property or portion thereof, with or without improvements, which is used—

(a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or

(b) For current program purposes that can be satisfied with only a portion of the property.

**§ 102–75.55 What does the term ''Not being put to optimum use'' mean?**

Not being put to optimum use means an entire property or portion thereof, with or without improvements, which—

(a) Even though used for current program purposes, the nature, value, or location of the property is such that it could be utilized for a different and significantly higher and better purpose; or

(b) The costs of occupying are substantially higher than other suitable properties that could be made available through transfer, purchase, or lease with total net savings to the Government, after considering property values, costs of moving, occupancy, operational efficiency, environmental effects, regional planning, and employee morale.

## Guidelines

**§ 102–75.60 What are landholding agencies' responsibilities concerning real property surveys?**

A landholding agency's responsibilities concerning real property utilization surveys are to—

(a) Survey real property under its control (*i.e.*, property reported on its financial statements) at least annually to identify property that is not utilized, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency's needs and the property's location. In conducting annual reviews of their property holdings, the GSA Customer Guide to Real Property Disposal can provide guidelines for Executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

**§ 102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?**

It is important that each Executive agency notify the disposal agency of its real property needs to determine whether the excess or surplus property of another agency is available that would meet its need and prevent the unnecessary purchase or lease of real property.

**§ 102–75.70 Are there any exceptions to this notification policy?**

Yes, Executive agencies are not required to notify the disposal agency when an agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics that limit the possible use of other available property. For example, Executive agencies are not required to notify disposal agencies concerning the acquisition of real property for a dam site, reservoir area, or the construction of a generating plant or a substation, since specific lands are needed, which limit the possible use of other available property. Therefore, no useful purpose would be served by notifying the disposal agency.

**§ 102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?**

In every case of a proposed transfer of excess real property, the most important consideration is the validity and appropriateness of the requirement upon which the proposal is based. Also, a proposed transfer must not establish a new program that has never been reflected in any previous budget submission or congressional action. Additionally, a proposed transfer must not substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

**§ 102–75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?**

Before requesting a transfer of excess real property, an Executive agency must—

(a) Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;

(b) Review all real property under its accountability that has been permitted or outleased and terminate the permit or lease for any property, or portion thereof, suitable for the proposed need, if termination is not prohibited by the terms of the permit or lease;

(c) Utilize property that is or can be made available under § 102–75.80(a) or (b) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;

(d) Confirm that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property that would be suitable for the intended purpose;

(e) Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and

(f) Consider the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

**§ 102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?**

Yes, but only on a temporary basis with the condition that the property will be released for further Federal utilization or disposal as surplus property at an agreed upon time when the transfer is arranged.

**§ 102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?**

GSA may temporarily assign or direct the use of such excess real property to the requesting agency. See § 102–75.240.

**§ 102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?**

Yes, GSA can authorize the use of excess real property for an approved program. See § 102–75.240.

## Land Withdrawn or Reserved From the Public Domain

**§ 102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?**

An agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA Regional Office a Report of Excess Real Property (Standard Form 118), with appropriate Schedules A, B, and C, only when—

(a) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR part 2372 *et seq.*) and sent a copy of the notice to the appropriate GSA Regional Office;

(b) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(c) The Department of the Interior provides a report identifying whether or not any other agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

**§ 102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?**

In such cases, the Department of the Interior must—

(a) Notify the appropriate GSA Regional Office of such a determination; and

(b) Authorize the landholding agency to identify in the Standard Form 118 any minerals in the land that the Department of the Interior determines to be unsuitable for disposition under the public land mining and mineral leasing laws.

## Transfers Under Other Laws

**§ 102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?**

Yes, the provisions of this section shall not apply to transfers of real property authorized to be made by 40 U.S.C. 113(e) or by any special statute that directs or requires an Executive agency to transfer or convey specifically described real property in accordance with the provisions of that statute. Transfers of real property must be made only under the authority of Title 40 of the United States Code, unless the independent authority granted to such agency specifically exempts the authority from the requirements of Title 40.

## Reporting of Excess Real Property

**§ 102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?**

Yes, landholding agencies must prepare reports of excess real property and related personal property on—

(a) Standard Form 118, Report of Excess Real Property, and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A;

(b) Standard Form 118b, Land, Schedule B; and

(c) Standard Form 118c, Related Personal Property, Schedule C.

**§ 102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?**

Yes, in all cases where Government-owned land is reported excess, Executive agencies must include a title report, prepared or approved by a qualified employee of the landholding agency, documenting the Government's title to the property.

## Title Report

**§ 102–75.125 What information must agencies include in the title report?**

When completing the title report, agencies must include—

(a) The description of the property;

(b) The date title vested in the United States;

(c) All exceptions, reservations, conditions, and restrictions, relating to the title;

(d) Detailed information concerning any action, thing, or circumstance that occurred from the date the United States acquired the property to the date of the report that in any way affected or may have affected the United States' right, title, or interest in and to the real property (including copies of legal comments or opinions discussing the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect must be made a part of the report;

(e) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect must be made a part of the report;

(f) Detailed information regarding any known flood hazards or flooding of the property, and, if the property is located in a flood-plain or on wetlands, a listing of restricted uses (along with the citations) identified in Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977;

(g) The specific identification and description of fixtures and related personal property that have possible historic or artistic value;

(h) The historical significance of the property and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property listed in the National Register. If the landholding agency is aware of any effort by the public to have the property listed in the National Register, it must also include this information;

(i) A description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (*e.g.*, fire-proofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. Agencies must also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property that is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499);

(j) A statement indicating whether or not lead-based paint is present on the property. Additionally, if the property is target housing (all housing except housing for the elderly or persons with disabilities or any zero bedroom dwelling) constructed prior to 1978, provide a risk assessment and paint inspection report that details all lead-based paint hazards; and

(k) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the U.S. Environmental Protection Agency (EPA) at 40 CFR part 373, took place on the property. Hazardous substance activity

includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property must review the regulations issued by EPA at 40 CFR part 373 for details on the information required and must comply with these requirements. In addition, agencies reporting such property shall review and comply with the regulations for the utilization and disposal of hazardous materials and certain categories of property set forth at 41 CFR part 101–42.

**§ 102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If hazardous substance activity took place on the property, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. The reporting agency must also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such hazardous substance activity was taken before the date the property was reported excess. If such action was not taken, the reporting agency must advise the disposal agency when such action will be completed or how the agency expects to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the disposal. See §§ 102–75.340 and 102–75.345.

**§ 102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If no hazardous substance activity took place, the reporting agency must include the following statement:

The (reporting agency) has determined, in accordance with regulations issued by EPA at 40 CFR part 373, that there is no evidence indicating that hazardous substance activity took place on the property during the time the property was owned by the United States.

## Other Necessary Information

**§ 102–75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?**

Executive agencies must provide—

(a) A legible, reproducible copy of all instruments in possession of the agency that affect the United States' right, title, or interest in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). If it is impracticable to transmit the abstracts of title and related title evidence, agencies must provide the name and address of the custodian of such documents in the title report referred to in § 102–75.120;

(b) Any appraisal reports indicating or providing the fair market value or the fair annual rental of the property, if requested by the disposal agency; and

(c) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by EPA under 40 CFR part 761, if requested by the disposal agency. If the property does contain any equipment subject to EPA regulation under 40 CFR part 761, the certification must include the landholding agency's assurance that each piece of equipment is now and will continue to be in compliance with the EPA regulations until disposal of the property.

## Examination for Acceptability

**§ 102–75.145 Is GSA required to review each report of excess?**

Yes, GSA must review each report of excess to ascertain whether the report was prepared according to the provisions of this part. GSA must notify the landholding agency, in writing, whether the report is acceptable or other information is needed within 15 calendar days after receipt of the report.

**§ 102–75.150 What happens when GSA determines that the report of excess is adequate?**

When GSA determines that a report is adequate, GSA will accept the report and inform the landholding agency of the acceptance date. However, the landholding agency must, upon request, promptly furnish any additional information or documents relating to the property required by GSA to accomplish a transfer or a disposal.

**§ 102–75.155 What happens if GSA determines that the report of excess is insufficient?**

Where GSA determines that a report is insufficient, GSA will return the report and inform the landholding agency of the facts and circumstances that make the report insufficient. The landholding agency must promptly take appropriate action to submit an acceptable report to GSA. If the landholding agency is unable to submit an acceptable report, the property will no longer be considered as excess property and the disposal agency will cease activity for the disposal of the property. However, GSA may accept the report of excess on a conditional basis and identify what deficiencies in the report must be corrected in order for the report to gain full acceptance.

## Designation as Personal Property

**§ 102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?**

Prefabricated movable structures such as Butler-type storage warehouses, Quonset huts, and house trailers (with or without undercarriages) reported to GSA along with the land on which they are located may, at GSA's discretion, be designated for disposition as personal property for off-site use or as real property for disposal with the land.

**§ 102–75.165 Should related personal property be designated real or personal property for disposition purposes?**

Related personal property may, at the disposal agency's discretion, be designated as personal property for disposal purposes. However, for fine artwork and sculptures, GSA's policy is that artwork specifically created for a Federal building is considered as a fixture of the building. This also applies to sculptures created for a Federal building or a public park. Disposal agencies must follow the policies and guidance for disposal of artwork and sculptures developed by the GSA Office of the Chief Architect, Center for Design Excellence and the Arts, and the Bulletin dated March 26, 1934, entitled ''Legal Title to Works Produced under the Public Works of Art Project.''

**§ 102–75.170 What happens to the related personal property in a structure scheduled for demolition?**

When a structure is to be demolished, any fixtures or related personal property therein may, at the disposal agency's discretion, be designated for disposition as personal property where a ready disposition can be made of these items. As indicated in § 102–75.165, particular consideration should be given to designating items having possible historical or artistic value as personal property.

## Transfers

**§ 102–75.175 What are GSA's responsibilities regarding transfer requests?**

Before property can be transferred among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia, GSA must determine that—

(a) The transfer is in the best interest of the Government;

(b) The requesting agency is the appropriate agency to hold the property; and

(c) The proposed land use will maximize use of the real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

**§ 102–75.180 May landholding agencies transfer excess real property without notifying GSA?**

Landholding agencies may, without notifying GSA, transfer excess real property that they use, occupy, or control under a lease, permit, license, easement, or similar instrument when—

(a) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(c) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet.

**§ 102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?**

In those instances, landholding agencies must transfer property following the policies in this subpart.

**§ 102–75.190 What amount must the transferee agency pay for the transfer of excess real property?**

The transferee agency must pay an amount equal to the property's fair market value (determined by the Administrator)—

(a) Where the transferor agency has requested the net proceeds of the transfer pursuant to 40 U.S.C. 574; or

(b) Where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841), is a mixed-ownership Government corporation, or the municipal government of the District of Columbia.

**§ 102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?**

As may be agreed upon by GSA and the corporation, the transferee agency must pay an amount equal to—

(a) The estimated fair market value of the property; or

(b) The corporation's book value of the property.

**§ 102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?**

Where the transfer is for the purpose of upgrading facilities (*i.e.*, for the purpose of replacing other property of the transferee agency, which because of the location, nature, or condition thereof, is less efficient for use), the transferee must pay an amount equal to the difference between the fair market value of the property to be replaced and the fair market value of the property requested, as determined by the Administrator.

**§ 102–75.205 Are transfers ever made without reimbursement by the transferee agency?**

Transfers may be made without reimbursement by the transferee agency only if—

(a) Congress has specifically authorized the transfer without reimbursement, or

(b) The Administrator, with the approval of the Director of the Office of Management and Budget (OMB), has approved a request for an exception from the 100 percent reimbursement requirement.

**§ 102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?**

The request must include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12512, Federal Real Property Management, dated April 29, 1985. The transferee agency must attach the explanation to the Request for Transfer of Excess Real and Related Personal Property (GSA Form 1334) prior to submitting the form to GSA. The unavailability of funds alone is not sufficient to justify an exception.

**§ 102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?**

Agency heads must endorse requests for exceptions to the 100 percent reimbursement requirement.

**§ 102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?**

Agencies must submit all requests for exception from the 100 percent reimbursement requirement to the appropriate GSA regional property disposal office.

**§ 102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?**

The Administrator must review all requests for exception from the 100 percent reimbursement requirement. If the Administrator approves the request, it is then submitted to OMB for final concurrence. If OMB approves the request, then GSA may complete the transfer.

**§ 102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?**

The agency requesting the property will assume responsibility for protection and maintenance costs not more than 40 days from the date of the Administrator's letter to OMB requesting concurrence for an exception to the 100 percent reimbursement requirement. If the request is denied, the requesting agency may pay the fair market value for the property or withdraw its request. If the request is withdrawn, responsibility for protection and maintenance cost will return to the landholding agency at that time.

**§ 102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?**

Yes, disposal agencies may transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction, pursuant to the provisions of 40 U.S.C. 113(d). The amount of reimbursement for such transfer must be the same as would be required for a transfer of excess property to an Executive agency under similar circumstances.

## Temporary Utilization

**§ 102–75.240 May excess real property be temporarily assigned/reassigned?**

Yes, whenever GSA determines that it is more advantageous to assign property temporarily rather than permanently, it may do so. If the space is for office, storage, or related facilities, GSA will determine the length of the assignment/reassignment. Agencies are required to reimburse the landholding agency (or GSA, if GSA has become responsible for seeking an appropriation for protection and maintenance expenses) (see § 102–75.970) for protection and maintenance expenses. GSA may also temporarily assign/reassign excess real property for uses other than storage, office or related facilities. In such cases, the agency receiving the temporary assignment may be required to pay a rental or users charge based upon the fair market value of the property, as determined by GSA.

If the property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at an agreed upon time (see § 102–75.85). The requesting agency is responsible for protection and maintenance expenses.

### Non-Federal Interim Use of Excess Property

#### § 102–75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?

Landholding agencies, upon approval from GSA, may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency and when the interim use will not impair the ability to dispose of the property.

## Subpart C—Surplus Real Property Disposal

#### § 102–75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?

The disposal agency must dispose of surplus real property—

(a) In the most economical manner consistent with the best interests of the Government; and

(b) Ordinarily for cash, consistent with the best interests of the Government.

#### § 102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?

The disposal agency must determine that there is no further Federal need or requirement for the excess real property and the property is surplus to the needs of the Federal Government. After reaching this determination, the disposal agency must expeditiously make the surplus property available for acquisition by State and local governmental units and non-profit institutions (see § 102–75.350) or for sale by public advertising, negotiation, or other disposal action. The disposal agency must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. Where hazardous substance activity is identified, see §§ 102–75.340 and 102–75.345 for required information that the disposal agency must incorporate into the offer to purchase and conveyance document.

#### § 102–75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?

The disposal agency may dispose of surplus real property by exchange for privately owned property for property management considerations such as boundary realignment or for providing access. The disposal agency may also dispose of surplus real property by exchange for privately owned property where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

#### § 102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

Yes, conveyance documents must identify all agreements and representations concerning restrictions and conditions affecting the property's future use, maintenance, or transfer.

### Applicability of Antitrust Laws

#### § 102–75.270 Must antitrust laws be considered when disposing of property?

Yes, antitrust laws must be considered in any case in which there is contemplated a disposal to any private interest of—

(a) Real and related personal property that has an estimated fair market value of $3 million or more; or

(b) Patents, processes, techniques, or inventions, irrespective of cost.

#### § 102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?

The Attorney General determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws.

#### § 102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?

The disposal agency must promptly provide the Attorney General with notice of any such proposed disposal and the probable terms or conditions, as required by 40 U.S.C. 559. If notice is given by any disposal agency other than GSA, a copy of the notice must also be provided simultaneously to the GSA Regional Office in which the property is located. Upon request, a disposal agency must furnish information that the Attorney General believes to be necessary in determining whether the proposed disposition or any other disposition of surplus real property violates or would violate any of the antitrust laws.

#### § 102–75.285 Can a disposal agency dispose of real property to a private interest specified in § 102–75.270 before advice is received from the Attorney General?

No, advice from the Attorney General must be received before disposing of real property.

### Disposals Under Other Laws

#### § 102–75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?

Except for disposals specifically authorized by special legislation, disposals of real property must be made only under the authority of Chapter 5 of Subtitle I of Title 40 of the United States Code. However, the Administrator of General Services can evaluate, on a case-by-case basis, the disposal provisions of any other law to determine consistency with the authority conferred by Title 40. The provisions of this section do not apply to disposals of real property authorized to be made by 40 U.S.C. 113 or by any special statute that directs or requires an Executive agency named in the law to transfer or convey specifically described real property in accordance with the provisions of that statute.

### Credit Disposals

#### § 102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

The disposal agency—

(a) May extend credit in connection with any disposal of surplus property when it determines that credit terms are necessary to avoid reducing the salability of the property and potential obtainable price and, when below market rates are extended, confer with the Office of Management and Budget to determine if the Federal Credit Reform Act of 1990 is applicable to the transaction;

(b) Must administer and manage the credit disposal and any related security;

(c) May enforce, adjust, or settle any right of the Government with respect to extending credit in a manner and with terms that are in the best interests of the Government; and

(d) Must include provisions in the conveyance documents that obligate the purchaser, where a sale is made upon credit, to obtain the disposal agency's prior written approval before reselling or leasing the property. The purchaser's credit obligations to the United States must be fulfilled before the disposal

agency may approve the resale of the property.

## Designation of Disposal Agencies

### § 102–75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?

A landholding agency may be the disposal agency for real and related personal property when—

(a) The agency has statutory authority to dispose of real and related personal property;

(b) The agency has delegated authority from GSA to dispose of real and related personal property; or

(c) The agency is disposing of—

(1) Leases, licenses, permits, easements, and other similar real estate interests held by agencies in non-Government-owned real property;

(2) Government-owned improvements, including fixtures, structures, and other improvements of any kind as long as the underlying land is not being disposed; or

(3) Standing timber, embedded gravel, sand, stone, and underground water, without the underlying land.

### § 102–75.297 Are there any exceptions to when landholding agencies can serve as the disposal agency?

Yes, landholding agencies may not serve as the disposal agency when—

(a) Either the landholding agency or GSA determines that the Government's best interests are served by disposing of leases, licenses, permits, easements and similar real estate interests together with other property owned or controlled by the Government that has been or will be reported to GSA, or

(b) Government-owned machinery and equipment being used by a contractor-operator will be sold to a contractor-operator.

### § 102–75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in § 102–75.296?

Yes. If requested, GSA, at its discretion, may be the disposal agency for such real property and real property interests.

### § 102–75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

Landholding agencies are and remain responsible for all rental/lease payments until the lease expires or is terminated. Landholding agencies are responsible for paying any restoration or other direct costs incurred by the Government associated with termination of a lease, and for paying any demolition and removal costs not offset by the sale of the property. (See also § 102–75.965.)

## Appraisal

### § 102–75.300 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal transactions, except when—

(a) An appraisal will serve no useful purpose ( *e.g.*, legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in subpart C of this part; or

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $300,000.

### § 102–75.305 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, agencies must obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of the property available for disposal.

### § 102–75.310 Who must agencies use to appraise the real property?

Agencies must use only experienced and qualified real estate appraisers familiar with the types of property to be appraised when conducting the appraisal. When an appraisal is required for negotiation purposes, the same standard applies. However, agencies may authorize other methods of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining that data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

### § 102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?

Yes, appraisers are authorized to consider the effect of historic covenants on the fair market value, if the property is in or eligible for listing in the National Register of Historic Places.

### § 102–75.320 Does appraisal information need to be kept confidential?

Yes, appraisals, appraisal reports, appraisal analyses, and other pre-decisional appraisal documents are confidential and can only be used by authorized Government personnel who can substantiate the need to know this information. Appraisal information must not be divulged prior to the delivery and acceptance of the deed. Any persons engaged to collect or evaluate appraisal information must certify that—

(a) They have no direct or indirect interest in the property; and

(b) The report was prepared and submitted without bias or influence.

## Inspection

### § 102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

Landholding agencies should provide all persons interested in acquiring available surplus property with the opportunity to make a complete inspection of the property, including any available inventory records, plans, specifications, and engineering reports that relate to the property. These inspections are subject to any necessary national security restrictions and are subject to the disposal agency's rules. (See §§ 102–75.335 and 102–75.985.)

## Submission of Offers To Purchase or Lease

### § 102–75.330 What form must all offers to purchase or lease be in?

All offers to purchase or lease must be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency. In addition to the financial terms upon which the offer is predicated, the offer must set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and must contain such other information as the disposal agency may request.

## Provisions Relating to Asbestos

### § 102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see § 102–75.125), the disposal agency must incorporate this information (less any cost or time estimates to remove the asbestos-containing materials) into any offer to purchase and conveyance document and include the following wording:

Notice of the Presence of Asbestos—Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA)

regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) that may be required in order to carry out any such inspection(s). Bidders (offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability, or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property that is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that, in its use and occupancy of the property, it will comply with all Federal, State, and local laws relating to asbestos.

## Provisions Relating to Hazardous Substance Activity

### § 102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see §§ 102–75.125 and 102–75.130), the disposal agency must incorporate this information into any offer to purchase and conveyance document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in the GSA Customer Guide to Real Property Disposal):

(a) Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency.

(b) A statement, certified by a responsible landholding agency official in the Report of Excess Real Property, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of CERCLA, or the Early Transfer Authority, or a conveyance to a ''potentially responsible party'', as defined by CERCLA (see 102–75.345)).

(c) A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance.

(d) A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

### § 102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

In the case where the purchaser or grantee is a potentially responsible party (PRP) with respect to hazardous substance activity on the property under consideration, the United States is no longer under a general obligation to certify that the property has been successfully remediated, or to commit to return to the property to address contamination that is discovered in the future. Therefore, the statements of responsibility and commitments on behalf of the United States referenced in § 102–75.340 should not be used. Instead, language should be included in the offer to purchase and conveyance document that is consistent with any agreement that has been reached between the landholding agency and the PRP with regard to prior hazardous substance activity.

## Public Benefit Conveyances

### § 102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?

Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain non-profit institutions or organizations at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations for these conveyances are found in this subpart.

### § 102–75.351 May the disposal agency waive screening for public benefit conveyances?

All properties, consistent with the highest and best use analysis, will normally be screened for public benefit uses. However, the disposal agency may waive public benefit screening, with the exception of the mandatory McKinney-Vento homeless screening, for specific property disposal considerations, *e.g.*, when a property has been reported excess for exchange purposes.

### § 102–75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?

Executive agencies must include in the offer to purchase and conveyance documents the non-discrimination clause in § 102–75.360 for public benefit conveyances.

### § 102–75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and in the conveyance document?

The wording of the non-discrimination clause must be as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of

the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

## Power Transmission Lines

### § 102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?

Yes, disposal agencies must notify State entities and Government agencies of the availability of a surplus power transmission line and right-of-way.

### § 102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Yes, section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)) allows any State or political subdivision, or any State or Government agency or instrumentality to certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needed to meet the requirements of a public or cooperative power project.

### § 102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Generally, once a State or political subdivision certifies that it needs a surplus power transmission line and the right-of-way, the disposal agency may sell the property to the state, or political subdivision thereof, at the fair market value. However, if a sale of a surplus transmission line cannot be accomplished because of the price to be charged, or other reasons, and the certification by the State or political subdivision is not withdrawn, the disposal agency must report the facts involved to the Administrator of General Services, to determine what further action will or should be taken to dispose of the property.

### § 102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

Yes, power transmission lines and rights-of-way not disposed of by sale for fair market value may be disposed of following other applicable provisions of this part, including, if appropriate, reclassification by the disposal agency.

## Property for Public Airports

### § 102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?

Yes, the disposal agency must notify eligible public agencies that property currently used as or suitable for use as a public airport under the Surplus Property Act of 1944, as amended, has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) must be transmitted with the copy of the surplus property notice sent to the appropriate regional office of the Federal Aviation Administration (FAA). The FAA must furnish an application form and instructions for the preparation of an application to eligible public agencies upon request.

### § 102–75.390 What does the term ''surplus airport property'' mean?

For the purposes of this part, surplus airport property is any surplus real property including improvements and personal property included as a part of the operating unit that the Administrator of FAA deems is—

(a) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101); or

(b) Reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from non-aviation businesses at a public airport. Approval for non-aviation revenue-producing areas may only be given for such areas as are anticipated to generate net proceeds that do not exceed expected deficits for operation of the aviation area applied for at the airport.

### § 102–75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?

Yes, section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. § 47151) authorizes the disposal agency to convey or dispose of surplus airport property to a State, political subdivision, municipality, or tax-supported institution for use as a public airport.

### § 102–75.400 Is industrial property located on an airport also considered to be ''airport property''?

No, if the Administrator of General Services determines that a property's highest and best use is industrial, then the property must be classified as such for disposal without regard to the public benefit conveyance provisions of this subpart.

### § 102–75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?

As soon as possible after receiving the copy of the surplus notice, the FAA must inform the disposal agency of its determination. Then, the FAA must provide assistance to any eligible public agency known to have a need for the property for a public airport, so that the public agency may develop a comprehensive and coordinated plan of use and procurement for the property.

### § 102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?

After an eligible public agency submits a plan of use and application, the disposal agency must transmit two copies of the plan and two copies of the application to the appropriate FAA regional office. The FAA must promptly submit a recommendation to the disposal agency for disposal of the property for a public airport or must inform the disposal agency that no such recommendation will be submitted.

### § 102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?

The head of the disposal agency, or his or her designee, may convey property approved by the FAA for use as a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended.

### § 102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?

Any airport property that the FAA does not recommend for disposal as a public airport must be disposed of in accordance with other applicable provisions of this part. However, the disposal agency must first notify the landholding agency of its inability to dispose of the property for use as a public airport. In addition, the disposal

agency must allow the landholding agency 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

**§ 102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?**

The Administrator of the FAA has the sole responsibility for enforcing compliance with the terms and conditions of disposals to be used as a public airport. The FAA is also responsible for reforming, correcting, or amending any disposal instruments; granting releases; and any action necessary for recapturing the property, using the provisions of 49 U.S.C. 47101 *et seq.*

**§ 102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?**

If property that was conveyed for use as a public airport is revested in the United States for noncompliance with the terms of the disposal, or other cause, the Administrator of the FAA must be accountable for the property and must report the property to GSA as excess property following the provisions of this part.

**§ 102–75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970), apply to the transfer of airports to State and local agencies?**

No, the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 47101–47131) (Airport Act of 1970), does not apply to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151–47153). Only property that the landholding agency determines cannot be reported excess to GSA for disposal under Title 40, but nevertheless may be made available for use by a State or local public body as a public airport without being inconsistent with the Federal program of the landholding agency, may be conveyed under the Airport Act of 1970. In the latter instance, the Airport Act of 1970 may be used to transfer non-excess land for airport development purposes provided it does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

**Property for Use as Historic Monuments**

**§ 102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?**

Disposal agencies must notify State and area wide clearinghouses and eligible public agencies that property that may be conveyed for use as a historic monument has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118) with accompanying schedules must be transmitted with the copy of each notice that is sent to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI).

**§ 102–75.445 Who can convey surplus real and related personal property for historic monument use?**

A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public, provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.

**§ 102–75.450 What type of property is suitable or desirable for use as a historic monument?**

Only property conforming with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments shall be determined to be suitable or desirable for use as a historic monument.

**§ 102–75.455 May historic monuments be used for revenue-producing activities?**

The disposal agency may authorize the use of historic monuments conveyed under 40 U.S.C. 550(h) or the Surplus Property Act of 1944, as amended, for revenue-producing activities, if the Secretary of the Interior—

(a) Determines that the activities, described in the applicant's proposed program of use, are compatible with the use of the property for historic monument purposes;

(b) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(c) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. DOI must not approve the plan unless it provides that all income in excess of costs of repair, rehabilitation, restoration, maintenance, and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities, is used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(d) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

**§ 102–75.460 What information must disposal agencies furnish eligible public agencies?**

Upon request, the disposal agency must furnish eligible public agencies with adequate preliminary property information and, with the landholding agency's cooperation, provide assistance to enable public agencies to obtain adequate property information.

**§ 102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?**

Eligible public agencies must submit the original and two copies of the completed application to acquire real property for use as a historic monument to the appropriate regional or field offices of NPS, which will forward one copy of the application to the appropriate regional office of the disposal agency.

**§ 102–75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?**

NPS must promptly—

(a) Submit the Secretary of the Interior's determination to the disposal agency; or

(b) Inform the disposal agency that no such recommendation will be submitted.

**§ 102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?**

The head of the disposal agency or his or her designee may convey to an eligible public agency surplus property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of 40 U.S.C. 550(h).

**§ 102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?**

The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of such a disposal. DOI is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property using the provisions of 40 U.S.C. 550(b). The actions are subject to the approval of the head of the disposal agency.

**§ 102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?**

In such a case, DOI must notify the appropriate GSA Public Buildings Service (PBS) Regional Office immediately by letter when title to the historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, including any improvements constructed since the original conveyance to the grantee. After receiving a statement from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Report of Excess Real Property, Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance of the property until the title reverts to the Federal Government, including the period of the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Property for Educational and Public Health Purposes

**§ 102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available for educational and/or public health purposes. The notice must require that any plans for an educational or public health use, resulting from the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with the Department of Education (ED) or the Department of Health and Human Services (HHS), as appropriate. The notice must also let eligible public agencies know where to obtain the applications, instructions for preparing them, and where to submit the application. The requirement for educational or public health use of the property by an eligible public agency is contingent upon the disposal agency's approval, under § 102–75.515, of a recommendation for assignment of Federal surplus real property received from ED or HHS. Further, any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in § 102–75.535.

**§ 102–75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?**

Yes, ED or HHS may notify eligible non-profit institutions that such property has been determined to be surplus. Notices to eligible non-profit institutions must require eligible non-profit institutions to coordinate any request for educational or public health use of the property with the appropriate public agency responsible for developing and submitting a comprehensive and coordinated plan of use and procurement for the property.

**§ 102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?**

The head of the disposal agency or his designee may—

(a) Assign to the Secretary of ED for disposal under 40 U.S.C. 550(c) surplus real property, including buildings, fixtures, and equipment, as recommended by the Secretary as being needed for school, classroom, or other educational use; or

(b) Assign to the Secretary of HHS for disposal under 40 U.S.C. 550 (d) such surplus real property, including buildings, fixtures, and equipment situated thereon, as recommended by the Secretary as being needed for use in the protection of public health, including research.

**§ 102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?**

Yes, eligible non-profit organizations will only receive surplus real property for an educational or public health use if the disposal agency approves or grants the assignment request from either ED or HHS. The disposal agency will also consider other uses for available surplus real property, taking into account the highest and best use determination. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in this part.

**§ 102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?**

ED and HHS must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, ED or HHS has 30 calendar days to review and approve an application and request assignment of the property, or inform the disposal agency that no assignment request will be forthcoming.

**§ 102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?**

When an eligible public agency submits a plan of use for property for an educational or public health requirement, the disposal agency must transmit two copies of the plan to the regional office of ED or HHS, as appropriate. The ED or HHS must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, as appropriate, or must inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it must assign the property by letter or other document to the Secretary of ED or HHS, as appropriate. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the appropriate Department.

**§ 102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?**

Any assignment recommendation that ED or HHS submits to the disposal agency must provide complete information concerning the educational or public health use, including—

(a) Identification of the property;

(b) The name of the applicant and the size and nature of its program;

(c) The specific use planned;

(d) The intended public benefit allowance;

(e) The estimate of the value upon which such proposed allowance is based; and

(f) An explanation if the acreage or value of the property exceeds the standards established by the Secretary.

**§ 102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?**

Landholding agencies must cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating to the property.

**§ 102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?**

In the absence of an approved application from ED or HHS to convey the property for educational or public health purposes, which must be received within the 30 calendar day time limit, the disposal agency will proceed with other disposal actions.

**§ 102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, ED or HHS must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 days of receiving the Notice of Proposed Transfer, ED or HHS may prepare the transfer documents and proceed with the transfer. ED or HHS must take all necessary actions to accomplish the transfer within 15–calendar days beginning when the disposal agency approves the transfer. ED or HHS must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(c) or (d) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**§ 102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?**

ED or HHS, as appropriate, is responsible for enforcing compliance with the terms and conditions of transfer. ED or HHS is also responsible for reforming, correcting, or amending any transfer instruments; granting releases; and for taking any necessary actions for recapturing the property using or following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. ED or HHS must notify the disposal agency of its intent to take any actions to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**§ 102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, ED or HHS must, prior to repossession or reversion of title, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from ED or HHS that the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with ED or HHS, determines that the property should be revested, ED or HHS must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Property for Providing Self-Help Housing or Housing Assistance

**§ 102–75.550 What does "self-help housing or housing assistance" mean?**

Property for self-help housing or housing assistance (which is separate from the program under Title V of the McKinney-Vento Homeless Assistance Act covered in subpart H of this part) is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of housing, under terms that require that—

(a) Any individual or family receiving housing or housing assistance must contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(b) Dwellings constructed, rehabilitated, or refurbished must be quality dwellings that comply with local building and safety codes and standards and must be available at prices below prevailing market prices.

**§ 102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?**

The head of the disposal agency, or designee, may assign, at his/her discretion, surplus real property, including buildings, fixtures, and equipment to the Secretary of the Department of Housing and Urban Development (HUD).

**§ 102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available. The notice must require that any plans for self-help housing or housing assistance use resulting from the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD. Eligible public agencies may obtain an application form and instructions for preparing and submitting the application from HUD.

**§ 102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or non-profit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?**

Yes, the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization is contingent upon the disposal agency's approval under § 102–75.585 of HUD's assignment recommendation/request.

Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(f) and referenced in § 102–75.605.

**§ 102–75.570 What happens if the disposal agency does not approve the assignment recommendation?**

If the recommendation is not approved, the disposal agency must also notify the Secretary of HUD and then may proceed with other disposal action.

**§ 102–75.575 Who notifies non-profit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?**

HUD notifies eligible non-profit organizations, following guidance in the GSA Customer Guide to Real Property Disposal. Such notices must require eligible nonprofit organizations to—

(a) Coordinate any requirement for self-help housing or housing assistance use of the property with the appropriate public agency; and

(b) Declare to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property.

**§ 102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?**

HUD must notify the disposal agency within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, HUD has 30 calendar days to review and approve an application and request assignment or inform the disposal agency that no assignment request is forthcoming.

**§ 102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?**

When an eligible public agency submits a plan of use for property for a self-help housing or housing assistance requirement, the disposal agency must transmit two copies of the plan to the appropriate HUD regional office. HUD must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or must inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to HUD. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it must assign the property by letter or other document to the Secretary of HUD. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify the Secretary of HUD.

**§ 102–75.590 What does the assignment recommendation contain?**

Any assignment recommendation that HUD submits to the disposal agency must set forth complete information concerning the self-help housing or housing assistance use, including—

(a) Identification of the property;

(b) Name of the applicant and the size and nature of its program;

(c) Specific use planned;

(d) Intended public benefit allowance;

(e) Estimate of the value upon which such proposed allowance is based; and

(f) An explanation, if the acreage or value of the property exceeds the standards established by the Secretary.

**§ 102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?**

Landholding agencies must cooperate to the fullest extent possible with HUD representatives in their inspection of such property and in furnishing information relating to such property.

**§ 102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?**

In the absence of an approved application from HUD for self-help housing or housing assistance use, which must be received within the 30–calendar day time limit specified therein, the disposal agency must proceed with other disposal action.

**§ 102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, HUD must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days of receiving the Notice of Proposed Transfer, HUD may prepare the transfer documents and proceed with the transfer. HUD must take all necessary actions to accomplish the transfer within 15 calendar days beginning when the disposal agency approves the transfer. HUD must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(f) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**§ 102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?**

HUD is responsible for enforcing compliance with the terms and conditions of transfer. HUD is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for taking any necessary actions for recapturing the property using the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. HUD must notify the head of the disposal agency of its intent to take action to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**§ 102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?**

HUD maintains responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Property transferred to an entity other than a public body and used for any purpose other than that for which it was sold or leased within a 30-year period must revert to the United States. If the property was leased, then the lease terminates. The appropriate Secretary (HUD or Department of Agriculture) and the Administrator of GSA can approve the new use of the property after the first 20 years of the original 30-year period has expired.

**§ 102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) must, prior to repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from HUD (or USDA) that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with HUD (or USDA), determines that the property should be revested, HUD (or

USDA) must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Property for Use as Public Park or Recreation Areas

### § 102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?

The head of the disposal agency or his or her designee is authorized to assign to the Secretary of the Interior for disposal under 40 U.S.C. 550(e), surplus real property, including buildings, fixtures, and equipment as recommended by the Secretary as being needed for use as a public park or recreation area for conveyance to a State, political subdivision, instrumentalities, or municipality.

### § 102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?

The disposal agency must notify established State, regional, or metropolitan clearinghouses and eligible public agencies that surplus property is available for use as a public park or recreation area. The disposal agency must transmit the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) with the copy of each notice sent to a regional or field office of the National Park Service (NPS) of the Department of the Interior (DOI).

### § 102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?

Upon request, DOI must furnish eligible public agencies with an application form to acquire property for permanent use as a public park or recreation area and preparation instructions for the application.

### § 102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?

DOI must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days from the date of the surplus notice.

### § 102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?

Landholding agencies must cooperate to the fullest extent possible with DOI representatives in their inspection of the property and in furnishing information relating to the property.

### § 102–75.650 When must DOI request assignment of the property?

Within 30 calendar days after the expiration of the 30–calendar day period specified in § 102–75.640, DOI must submit to the disposal agency an assignment recommendation along with a copy of the application or inform the disposal agency that a recommendation will not be made for assignment of the property.

### § 102–75.655 What does the assignment recommendation contain?

Any recommendation submitted by DOI must provide complete information concerning the plans for use of the property as a public park or recreation area, including—

(a) Identification of the property;
(b) The name of the applicant;
(c) The specific use planned; and
(d) The intended public benefit allowance.

### § 102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?

If DOI does not approve any applications or does not submit an assignment recommendation to convey the property for public park or recreation purposes, the disposal agency must proceed with other disposal action.

### § 102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOI, it must assign the property by letter or other document to the Secretary of the Interior. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the Secretary.

### § 102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, the Secretary of the Interior must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days, the Secretary may proceed with the transfer. DOI must take all necessary actions to accomplish the transfer within 15 calendar days after the expiration of the 30–calendar day period provided for the disposal agency to consider the notice. DOI may place the applicant in possession of the property as soon as practicable to minimize the Government's expense of protection and maintenance of the property. As of the date the applicant takes possession of the property, or the date it is conveyed, whichever occurs first, the applicant must assume responsibility for care and handling and all risks of loss or damage to the property, and has all obligations and liabilities of ownership. DOI must furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under 40 U.S.C. 550(e) and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

### § 102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?

Where appropriate, the disposal agency may make the assignment subject to DOI requiring the grantee or recipient to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer, such as for surveys, fencing, security of the remaining property, or otherwise.

### § 102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?

The deed of conveyance of any surplus real property transferred for public park and recreation purposes under 40 U.S.C. 550(e) must require that the property be used and maintained for the purpose for which it was conveyed in perpetuity. In the event that the property ceases to be used or maintained for that purpose, all or any portion of such property will in its existing condition, at the option of the United States, revert to the United States. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions determined by the Secretary of the Interior to be necessary to safeguard the interests of the United States.

### § 102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?

The Secretary of the Interior is responsible for enforcing compliance

with the terms and conditions of transfer. The Secretary of the Interior is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for recapturing any property following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. DOI must notify the head of the disposal agency of its intent to take or recapture the property. The notice must identify the property affected and describe in detail the proposed action, including the reasons for the proposed action.

**§ 102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?**

DOI must notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, using the Report of Excess Real Property (Standard Form 118) and the appropriate schedules. After receiving notice from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Property for Displaced Persons

**§ 102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?**

Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4638 (the Relocation Act), authorizes the disposal agency to transfer surplus real property to a State agency to provide replacement housing under title II of the Relocation Act for persons who are or will be displaced by Federal or Federally assisted projects.

**§ 102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?**

After receiving the surplus notice, any Federal agency needing property for replacement housing for displaced persons may solicit applications from eligible State agencies.

**§ 102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?**

Federal agencies must notify the disposal agency within 30 calendar days after the date of the surplus notice, if an eligible State agency is interested in acquiring the property under section 218 of the Relocation Act.

**§ 102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

Both landholding and disposal agencies must cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of the property and in furnishing information relating to the property.

**§ 102–75.715 When can a Federal agency request transfer of the property to the selected State agency?**

Federal agencies must advise the disposal agency and request transfer of the property to the selected State agency within 30 calendar days after the expiration of the 30–calendar day period specified in § 102–75.705.

**§ 102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?**

Any request submitted by a Federal agency must be in the form of a letter addressed to the appropriate GSA Public Buildings Service (PBS) regional property disposal office.

**§ 102–75.725 What does the transfer request contain?**

Any transfer request must include—

(a) Identification of the property by name, location, and control number;

(b) The name and address of the specific State agency and a copy of the State agency's application or proposal;

(c) A certification by the appropriate Federal agency official that the property is required to house displaced persons authorized by section 218; that all other options authorized under title II of the Relocation Act have been explored and replacement housing cannot be found or made available through those channels; and that the Federal or Federally assisted project cannot be accomplished unless the property is made available for replacement housing;

(d) Any special terms and conditions that the Federal agency deems necessary to include in conveyance instruments to ensure that the property is used for the intended purpose;

(e) The name and proposed location of the Federal or Federally assisted project that is creating the requirement;

(f) Purpose of the project;

(g) Citation of enabling legislation or authorization for the project, when appropriate;

(h) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Relocation Act; and

(i) Details of the arrangements that have been made to construct replacement housing on the surplus property and to ensure that displaced persons will be provided housing in the development.

**§ 102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

If the disposal agency does not receive a request for assignment or transfer of the property under § 102–75.715, then the disposal agency must proceed with other appropriate disposal actions.

**§ 102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?**

If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it must transfer the property to the designated State agency on such terms and conditions as will protect the United States' interests, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency must be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value. Disposal of the property at less than fair market value must also be approved by the disposal agency.

**§ 102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?**

Yes, the State agency is required to bear the costs of any out-of-pocket expenses necessary to accomplish the transfer, such as costs of surveys, fencing, or security of the remaining property.

**§ 102–75.745 What happens if the property transfer request is not approved by the disposal agency?**

If the request is not approved, the disposal agency must notify the Federal agency requesting the transfer. The disposal agency must furnish a copy of the notice of disapproval to the landholding agency.

## Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes

**§ 102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?**

Under 40 U.S.C. 553, the head of the disposal agency or designee may, in his or her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named in the section; or to any political subdivision or instrumentality, surplus real and related personal property for—

(a) Correctional facility purposes, if the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(b) Law enforcement purposes, if the Attorney General has determined that the property is required for such purposes; or

(c) Emergency management response purposes, including fire and rescue services, if the Director of the Federal Emergency Management Agency (FEMA) has determined that the property is required for such purposes.

**§ 102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?**

The disposal agency must provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and FEMA that surplus property is available. The disposal agency's notice or notification must include a copy of the landholding agency's Report of Excess Real Property (Standard Form 118), with accompanying schedules.

**§ 102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?**

OJP or FEMA must send notices of availability to the appropriate State and local public agencies. The notices must state that OJP or FEMA, as appropriate, must coordinate and approve any planning involved in developing a comprehensive and coordinated plan of use and procurement for the property for correctional facility, law enforcement, or emergency management response use. The notice must also state that public agencies may obtain application forms and preparation instructions from OJP or FEMA.

**§ 102–75.765 What does the term ''law enforcement'' mean?**

The OJP defines ''law enforcement'' as ''any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training.''

**§ 102–75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?**

Yes, the disposal agency must approve a determination, under § 102–75.795, by DOJ that identifies surplus property required for correctional facility use or for law enforcement use before an eligible public agency can obtain such property for correctional facility or law enforcement use.

**§ 102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?**

Yes, the disposal agency must approve a determination, under § 102–75.795, by FEMA that identifies surplus property required for emergency management response use before an eligible public agency can obtain such property for emergency management response use.

**§ 102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?**

OJP or FEMA must notify the disposal agency within 30 calendar days after the date of the surplus notice, if there is an eligible applicant interested in acquiring the property. After that 30–calendar day period expires, OJP or FEMA then has another 30 days to review and approve an appropriate program and notify the disposal agency of the need for the property. If no application is approved, then OJP or FEMA must notify the disposal agency that there is no requirement for the property within the 30–calendar day period allotted for review and approval.

**§ 102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?**

Any determination that DOJ or FEMA submits to the disposal agency must provide complete information concerning the correctional facility, law enforcement, or emergency management response use, including—

(a) Identification of the property;

(b) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(c) A copy of the approved application that defines the proposed plan of use; and

(d) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

**§ 102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?**

Both landholding and disposal agencies must cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating to the property.

**§ 102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?**

If, after considering other uses for the property, the disposal agency approves the assignment request by DOJ or FEMA, the disposal agency must convey the property to the appropriate grantee. The disposal agency must proceed with other disposal action if it does not approve the assignment request, if DOJ or FEMA does not submit an assignment request, or if the disposal agency does not receive the determination within the 30 calendar days specified in § 102–75.780. The disposal agency must notify OJP or FEMA 15 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and must furnish to OJP or FEMA a copy of the conveyance documents.

**§ 102–75.800 What information must be included in the deed of conveyance?**

The deed of conveyance of any surplus real property transferred under the provisions of 40 U.S.C. 553 must provide that all property be used and maintained for the purpose for which it was conveyed in perpetuity. If the property ceases to be used or maintained for that purpose, all or any portion of the property must, at the option of the United States, revert to the United States in its existing condition. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions the Administrator of General Services determines to be necessary to safeguard the United States' interests.

**§ 102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?**

The Administrator of General Services is responsible for enforcing compliance with the terms and conditions of disposals of property to be used for correctional facility, law enforcement, or emergency management response purposes. GSA is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property following the provisions of 40 U.S.C. 553(e).

**§ 102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?**

Upon discovery of any information indicating a change in use, OJP or FEMA must—

(a) Notify GSA; and

(b) Upon request, make a redetermination of continued appropriateness of the use of a transferred property.

**§ 102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?**

OJP or FEMA must, prior to the repossession, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved. OJP or FEMA must use the Report of Excess Real Property (Standard Form 118), and the appropriate schedules for this purpose. After receiving a statement from OJP or FEMA that the title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with OJP or FEMA, determines that the property should be revested, OJP or FEMA must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Property for Port Facility Use

**§ 102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?**

Under 40 U.S.C. 554, the Administrator of General Services, the Secretary of the Department of Defense (in the case of property located at a military installation closed or realigned pursuant to a base closure law), or their designee, may assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to governmental bodies, any political subdivision, municipality, or instrumentality, surplus real and related personal property, including buildings, fixtures, and equipment situated on the property, that DOT recommends as being needed for the development or operation of a port facility.

**§ 102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?**

The disposal agency must notify established State, regional or metropolitan clearinghouses and eligible public agencies that surplus real property is available for the development or operation of a port facility. The disposal agency must transmit a copy of the notice to DOT and a copy of the landholding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

**§ 102–75.830 What does the surplus notice contain?**

Surplus notices to eligible public agencies must state—

(a) That public agencies must coordinate any planning involved in the development of the comprehensive and coordinated plan of use and procurement of property, with DOT, the Secretary of Labor, and the Secretary of Commerce;

(b) That any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for the application and instructions;

(c) That the disposal agency must approve a recommendation from DOT before it can assign the property to DOT (see § 102–75.905); and

(d) That any subsequent conveyance is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 554 and referenced in § 102–75.865.

**§ 102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?**

DOT must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30–calendar day period expires, DOT then has another 30 calendar days to review and approve applications and notify the disposal agency of the need for the property. If no application is approved, then DOT must notify the disposal agency that there is no requirement for the property within the same 30–calendar day period allotted for review and approval.

**§ 102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?**

Whenever an eligible public agency has submitted a plan of use for a port facility requirement, the disposal agency must transmit two copies of the plan to DOT. DOT must either submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to DOT.

**§ 102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?**

Any assignment recommendation that DOT submits to the disposal agency must provide complete information concerning the contemplated port facility use, including—

(a) An identification of the property;

(b) An identification of the applicant;

(c) A copy of the approved application, which defines the proposed plan of use of the property;

(d) A statement that DOT's determination (that the property is located in an area of serious economic disruption) was made in consultation with the Secretary of Labor;

(e) A statement that DOT approved the economic development plan,

associated with the plan of use of the property, in consultation with the Secretary of Commerce; and

(f) A copy of the explanatory statement, required under 40 U.S.C. 554(c)(2)(C).

**§ 102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?**

Landholding agencies must cooperate to the fullest extent possible with DOT representatives and the Secretary of Commerce in their inspection of such property, and with the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating to such property.

**§ 102–75.855 What happens if DOT does not submit an assignment recommendation?**

If DOT does not submit an assignment recommendation or if it is not received within 30 calendar days, the disposal agency must proceed with other disposal action.

**§ 102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?**

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, the disposal agency must assign the property by letter or other document to DOT. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify DOT. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency.

**§ 102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?**

After receiving the assignment letter from the disposal agency, DOT must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days after the date of the assignment letter. If the disposal agency approves the proposed transfer within 30 calendar days of the receipt of the Notice of Proposed Transfer, DOT may prepare the conveyance documents and proceed with the conveyance. DOT must take all necessary actions to accomplish the conveyance within 15 calendar days after the expiration of the 30–calendar day period provided for the disposal agency to consider the notice. DOT must furnish the disposal agency two conformed copies of the instruments conveying property and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

**§ 102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?**

DOT is responsible for enforcing compliance with the terms and conditions of conveyance, including reforming, correcting, or amending any instrument of conveyance; granting releases; and taking any necessary actions to recapture the property following the provisions of 40 U.S.C. 554(f). Any of these actions are subject to the approval of the head of the disposal agency. DOT must notify the head of the disposal agency of its intent to take any proposed action, identify the property affected, and describe in detail the proposed action, including the reasons for the proposed action.

**§ 102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?**

In each case of a repossession by the United States, DOT must, at or prior to reversion of title, provide the appropriate GSA regional property disposal office, with a Report of Excess Real Property (Standard Form 118) and accompanying schedules. After receiving a statement from DOT that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOT, determines that the property should be revested, DOT must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

## Negotiated Sales

**§ 102–75.880 When may Executive agencies conduct negotiated sales?**

Executive agencies may conduct negotiated sales only when—

(a) The estimated fair market value of the property does not exceed $15,000;

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

(d) The disposals will be to States, the Commonwealth of Puerto Rico, possessions, political subdivisions, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

(e) Negotiation is otherwise authorized by Chapter 5 of Subtitle I of Title 40 of the United States Code or other law, such as disposals of power transmission lines for public or cooperative power projects.

**§ 102–75.885 What are the disposal agency's responsibilities concerning negotiated sales?**

The disposal agency must—

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement if the fair market value of the property exceeds $100,000, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 545(e), to the appropriate committees of the Congress in advance of such disposal.

**§ 102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?**

Disposal agencies must include in the offer to purchase and conveyance documents an excess profits clause, which usually runs for 3 years, to eliminate the potential for windfall profits to public agencies. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchaser's costs will be remitted to the Federal Government.

**§ 102–75.895 What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?**

The wording of the excess profits clause should generally be as follows:

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its

successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property.

(2) The direct costs actually incurred and paid for improvements that serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements.

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section.

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) To verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A statement indicating whether or not a resale has been made.

(2) A description of each portion of the property that has been resold.

(3) The sale price of each such resold portion.

(4) The identity of each purchaser.

(5) The proposed land use.

(6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions that it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

### § 102–75.900 What is a negotiated sale for economic development purposes?

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

## Explanatory Statements for Negotiated Sales

### § 102–75.905 When must the disposal agency prepare an explanatory statement?

The disposal agency must prepare an explanatory statement of the circumstances of each of the following proposed disposals by negotiation:

(a) Any real property that has an estimated fair market value in excess of $100,000, except that any real property disposed of by lease or exchange is subject only to paragraphs (b) through (d) of this section.

(b) Any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of $100,000 for any of such years.

(c) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of $100,000.

(d) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property disposed in which any part of the consideration is real property.

### § 102–75.910 Are there any exceptions to this policy of preparing explanatory statements?

Yes, the disposal agency is not required to prepare an explanatory statement for property authorized to be disposed of without advertising by any provision of law other than 40 U.S.C. 545.

### § 102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?

Yes, disposal agencies must retain a copy of the explanatory statement in their files.

### § 102–75.920 Where is the explanatory statement sent?

Disposal agencies must submit each explanatory statement to the Administrator of General Services for review and transmittal by letter from the Administrator of General Services to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and any other appropriate committees of the Senate and House of Representatives. Disposal agencies must include in the submission to the Administrator of General Services any supporting data that may be relevant and necessary for evaluating the proposed action.

### § 102–75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?

Yes, GSA must furnish copies of its transmittal letters to the committees of the Congress (see § 102–75.920) to the disposal agency.

### § 102–75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

If there is no objection, the disposal agency may consummate the sale on or after 35 days from the date the Administrator of General Services transmitted the explanatory statement to the committees. If there is an objection, the disposal agency must resolve objections with the appropriate Congressional committee or subcommittee before consummating the sale.

## Public Sales

### § 102–75.935 What are disposal agencies' responsibilities concerning public sales?

Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

## Disposing of Easements

### § 102–75.936 When can an agency dispose of an easement?

When the use, occupancy or control of an easement is no longer needed, agencies may release the easement to the owner of the land subject to the easement (servient estate).

### § 102–75.937 Can an easement be released or disposed of at no cost?

Yes. However, agencies must consider the Government's cost of acquiring the easement and other factors when determining if the easement will be disposed of with or without monetary or other consideration. If the easement was acquired at substantial consideration, agencies must—

(a) Determine the easement's fair market value (estimate the fair market value of the fee land without the easement and with the easement then compute the difference or compute the damage the easement caused to the fee land); and

(b) Negotiate the highest obtainable price with the owner of the servient estate to release the easement.

**§ 102–75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?**

Yes. If the easement is no longer needed in connection with the dominant estate, it may be disposed of separately to the owner of the servient estate. However, if the dominant estate is also surplus, the easement should be disposed of with the dominant estate.

### Granting Easements

**§ 102–75.939 When can agencies grant easements?**

Agencies may grant easements in, on, or over Government-owned real property upon determining that the easement will not adversely impact the Government's interests.

**§ 102–75.940 Can agencies grant easements at no cost?**

Yes. Easements may be granted with or without monetary or other consideration, including any interest in real property.

**§ 102–75.941 Does an agency retain responsibility for the easement?**

Agencies may relinquish legislative jurisdiction as deemed necessary and desirable to the State where the real property containing the easement is located.

**§ 102–75.942 What must agencies consider when granting easements?**

Agencies must—

(a) Determine the easement's fair market value; and

(b) Determine the remaining property's reduced or enhanced value because of the easement.

**§ 102–75.943 What happens if granting an easement will reduce the value of the property?**

If the easement will reduce the property's value, agencies must grant the easement for the amount by which the property's fair market value is decreased unless the agency determines that the Government's best interests are served by granting the easement at either reduced or without monetary or other consideration.

### Non-Federal Interim Use of Surplus Property

**§ 102–75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?**

Yes, landholding agencies who possess independent authority to outlease property may allow organizations to use surplus real property awaiting disposal using either a lease or permit, only when—

(a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency;

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property; and

(c) The agency executing the agreement is responsible for the servicing of such property.

## Subpart D—Management of Excess and Surplus Real Property

**§ 102–75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?**

GSA's policy is to—

(a) Manage excess and surplus real property, including related personal property, by providing only those minimum services necessary to preserve the Government's interest and realizable value of the property considered;

(b) Place excess and surplus real property in productive use through interim utilization, provided, that such temporary use and occupancy do not interfere with, delay, or impede its transfer to a Federal agency or disposal; and

(c) Render safe or destroy aspects of excess and surplus real property that are dangerous to the public health or safety.

### Taxes and Other Obligations

**§ 102–75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?**

Except as otherwise provided in § 102-75.230, the landholding agency is still responsible for any and all operational costs and expenses or other property-related obligations pending transfer or disposal of the property.

### Decontamination

**§ 102–75.955 Who is responsible for decontaminating excess and surplus real property?**

The landholding agency is responsible for all expenses to the Government and for the supervision of the decontamination of excess and surplus real property that has been contaminated with hazardous materials of any sort. Extreme care must be exercised in the decontamination, management, and disposal of contaminated property in order to prevent such properties from becoming a hazard to the general public. The landholding agency must inform the disposal agency of any and all hazards involved relative to such property to protect the general public from hazards and to limit the Government's liability resulting from disposal or mishandling of hazardous materials.

### Improvements or Alterations

**§ 102–75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?**

Yes, landholding agencies may make improvements or alterations that involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in excess or surplus structures, utilities, installations, and land improvements, in those cases where disposal cannot be accomplished without such improvements or alterations. However, agencies must not enter into commitments concerning improvements or alterations without GSA's prior approval.

### Protection and Maintenance

**§ 102–75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?**

The landholding agency remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to another Federal agency or disposal. Guidelines for protection and maintenance of excess and surplus real property are in the GSA Customer Guide to Real Property Disposal. The landholding agency is responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

**§ 102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?**

Generally, the landholding agency is responsible for the cost of protection and maintenance of excess or surplus property until the property is transferred or disposed, but not more than 15 months. However, the landholding agency is responsible for providing and funding protection and maintenance during any delay beyond that 15 month period, if the landholding agency—

(a) Requests deferral of the disposal beyond the 15 month period;

(b) Continues to occupy the property beyond the 15 month period to the detriment of orderly disposal; or

(c) Otherwise takes actions that result in a delay in the disposition beyond the 15 months.

**§ 102–75.975 What happens if the property is not conveyed or disposed of during this time frame?**

If the property is not transferred to a Federal agency or disposed of during the 15-month period mentioned in § 102–75.970, then the disposal agency must pay or reimburse the landholding agency for protection and maintenance expenses incurred from the expiration date of said time period to final disposal, unless—

(a) There is no written agreement between the landholding agency and the disposal agency specifying the maximum amount of protection and maintenance expenses for which the disposal agency is responsible;

(b) The disposal agency's appropriation, as authorized by Congress, does not contain a provision to allow for payment and/or reimbursement of protection and maintenance expenses; or

(c) The delay is caused by an Executive agency's request for an exception from the 100 percent reimbursement requirement specified in § 102–75.205. In this latter case, the requesting agency becomes responsible for protection and maintenance expenses incurred because of the delay.

**§ 102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?**

If there is no written agreement (between the landholding agency and the disposal agency) or no Congressional appropriation to the disposal agency, the landholding agency is responsible for all protection and maintenance expenses, without any right of contribution or reimbursement from the disposal agency.

### Assistance in Disposition

**§ 102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?**

Yes, the landholding agency must cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the landholding agency must absorb the entire cost of such actions.

## Subpart E—Abandonment, Destruction, or Donation to Public Bodies

**§ 102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?**

Yes, subject to the restrictions in this subpart, any Federal agency having control of real property that has no commercial value or for which the estimated cost of continued care and handling exceeds the estimated proceeds from its sale, may—

(a) Abandon or destroy Government-owned improvements and related personal property located on privately-owned land;

(b) Destroy Government-owned improvements and related personal property located on Government-owned land (abandonment of such property is not authorized); or

(c) Donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein.

### Dangerous Property

**§ 102–75.995 May Federal agencies dispose of dangerous property?**

No, property that is dangerous to public health or safety must be made harmless or have adequate safeguards in place before it can be abandoned, destroyed, or donated to public bodies.

### Determinations

**§ 102–75.1000 How is the decision made to abandon, destroy, or donate property?**

No property shall be abandoned, destroyed, or donated by a Federal agency under § 102–75.990, unless a duly authorized official of that agency determines, in writing, that—

(a) The property has no commercial value; or

(b) The estimated cost of its continued care and handling exceeds the estimated proceeds from its sale.

**§ 102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?**

Only a duly authorized official of that agency not directly accountable for the subject property can make the determination.

**§ 102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?**

A reviewing authority must approve determinations made under § 102–75.1000 before any such disposal, whenever all the property proposed to be disposed of by a Federal agency has a current estimated fair market value of more than $50,000.

### Restrictions

**§ 102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?**

Yes, Federal agencies must obtain prior concurrence of GSA before donating to public bodies—

(a) Improvements on land or related personal property having a current estimated fair market value in excess of $250,000; and

(b) Land, regardless of cost.

### Disposal Costs

**§ 102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?**

Yes, any public body receiving donated improvements on land or related personal property must pay the disposal costs associated with the donation, such as dismantling, removal, and the cleaning up of the premises.

### Abandonment and Destruction

**§ 102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?**

A Federal agency may not abandon or destroy improvements on land or related personal property unless a duly authorized official of that agency finds, in writing, that donating the property is not feasible. This written finding is in addition to the determination prescribed in §§ 102–75.1000, 102–75.1005, and 102–75.1010. If donating the property becomes feasible at any time prior to actually abandoning or destroying the property, the Federal agency must donate it.

**§ 102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?**

No, Federal agencies may not abandon or destroy property in a manner that is detrimental or dangerous to public health or safety or that will infringe on the rights of other persons.

**§ 102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?**

Yes, GSA must concur in an agency's abandonment or destruction of improvements on land or related personal property prior to abandoning or destroying such improvements on land or related personal property—

(a) That are of permanent type construction; or

(b) The retention of which would enhance the value of the underlying

land, if it were to be made available for sale or lease.

**§ 102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?**

Except as provided in § 102–75.1045, a Federal agency must not abandon or destroy improvements on land or related personal property until after it has given public notice of the proposed abandonment or destruction. This notice must be given in the area in which the property is located, must contain a general description of the property to be abandoned or destroyed, and must include an offering of the property for sale. A copy of the notice must be given to the GSA regional property disposal office for the region in which the property is located.

**§ 102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?**

Yes, property can be abandoned or destroyed without public notice if—

(a) Its value is so low or the cost of its care and handling so great that retaining the property to post public notice is clearly not economical;

(b) Health, safety, or security considerations require its immediate abandonment or destruction; or

(c) The assigned mission of the agency might be jeopardized by the delay, and a duly authorized Federal agency official finds in writing, with respect to paragraph (a), (b), or (c) of this section, and a reviewing authority approves this finding. The finding must be in addition to the determinations prescribed in §§ 102–75.1000, 102–75.1005, 102–75.1010, and 102–75.1025.

**§ 102–75.1050 Is there any property for which this subpart does not apply?**

Yes, this subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to 40 U.S.C. 550(c) or (d).

## Subpart F—Delegations

### Delegation to the Department of Defense (DoD)

**§ 102–75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?**

GSA delegates to the Secretary of Defense the authority to determine that Federal agencies do not need Department of Defense controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

**§ 102–75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**§ 102–75.1065 When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?**

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**§ 102–75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?**

Yes, the Secretary of Defense may redelegate the authority delegated in § 102–75.1055 to any officer or employee of the Department of Defense.

### Delegation to the Department of Agriculture (USDA)

**§ 102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?**

GSA delegates authority to the Secretary of Agriculture to determine that Federal agencies do not need USDA-controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

**§ 102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**§ 102–75.1085 When using a delegation of real property disposal authority under this subpart, is USDA required to report excess property to GSA?**

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**§ 102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?**

Yes, the Secretary of Agriculture may redelegate authority delegated in § 102–75.1075 to any officer or employee of the Department of Agriculture.

### Delegation to the Department of the Interior

**§ 102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?**

GSA delegates authority to the Secretary of the Interior to—

(a) Maintain custody, control, and accountability for mineral resources in, on, or under Federal real property that the Administrator or his designee occasionally designates as currently utilized, excess, or surplus to the Government's needs;

(b) Dispose of mineral resources by lease and to administer those leases that are made; and

(c) Determine that Federal agencies do not need Department of the Interior controlled excess real property and related personal property with an estimated fair market value, including all components of the property, of less than $50,000; and to dispose of the property by means most advantageous to the United States.

**§ 102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?**

Yes, the Secretary of the Interior may redelegate this authority to any officer, official, or employee of the Department of the Interior.

**§ 102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?**

Under this authority, the Secretary of the Interior is responsible for—

(a) Maintaining proper inventory records, as head of the landholding agency;

(b) Monitoring the minerals as necessary, as head of the landholding agency, to prevent unauthorized mining or removal of the minerals;

(c) Securing any appraisals deemed necessary by the Secretary;

(d) Coordinating with all surface landowners, Federal or otherwise, to prevent unnecessary interference with the surface use;

(e) Restoring damaged or disturbed lands after removal of the mineral deposits;

(f) Notifying the Administrator of General Services when the disposal of

all marketable mineral deposits is complete;

(g) Complying with the applicable environmental laws and regulations, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930);

(h) Forwarding promptly to the Administrator of General Services copies of any agreements executed under this authority; and

(i) Providing the Administrator of General Services with an annual accounting of the proceeds received from leases executed under this authority.

### Native American-Related Delegations

#### § 102–75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?

GSA delegates authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education to transfer and to retransfer to each other, upon request, any of the property of each agency that is being used and will continue to be used in the administration of any functions relating to the Native Americans. The term property, as used in this delegation, includes real property and such personal property as the Secretary making the transfer or re-transfer determines to be related personal property. The Departments must exercise the authority conferred in this section following applicable GSA regulations issued pursuant to the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code.

#### § 102–75.1115 Are there any limitations or restrictions on this delegation of authority?

This authority must be used only in connection with property that the appropriate Secretary determines—

(a) Comprises a functional unit;

(b) Is located within the United States; and

(c) Has an acquisition cost of $100,000 or less, provided that the transfer or retransfer does not include property situated in any area that is recognized as an urban area or place as identified by the most recent decennial census.

#### § 102–75.1120 Does the property have to be Federally screened?

No, screening is not required because it would accomplish no useful purpose, since the property subject to transfer or retransfer will continue to be used in the administration of any functions relating to Native Americans.

#### § 102–75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?

Yes, transfers/retransfers under this delegation can be at no cost or without consideration, except—

(a) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(b) Whenever reimbursement at fair market value is required by subpart B of this part (entitled ''Utilization of Excess Real Property'').

#### § 102–75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?

The Secretary requesting the transfer or retransfer must certify in writing that no funds are available to acquire the property. The Secretary transferring or retransferring the property may make any determination necessary that would otherwise be made by GSA to carry out the authority contained in this delegation.

#### § 102–75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

## Subpart G—Conditional Gifts of Real Property to Further the Defense Effort

#### § 102–75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of Chapter 582–Public Law 537 (July 27, 1954) must notify the appropriate GSA regional property disposal office and must submit to GSA a recommendation indicating whether the Government should accept or reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions of other laws. Following receipt of such notification and recommendation, GSA must—

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and

(b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

#### § 102–75.1145 What action must the Federal agency receiving an offer of a conditional gift take?

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate acceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

#### § 102–75.1150 What happens to the gift if GSA determines it to be acceptable?

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

#### § 102–75.1155 May an acceptable gift of property be converted to money?

GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account that will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

## Subpart H—Use of Federal Real Property to Assist the Homeless

### Definitions

#### § 102–75.1160 What definitions apply to this subpart?

*Applicant* means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

*Checklist or property checklist* means the form developed by HUD for use by landholding agencies to report the

information to be used by HUD in making determinations of suitability.

*Classification* means a property's designation as unutilized, underutilized, excess, or surplus.

*Day* means one calendar day, including weekends and holidays.

*Eligible organization* means a State, unit of local government, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

*Excess property* means any property under the control of any Executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 524.

*GSA* means the United States General Services Administration.

*HHS* means the United States Department of Health and Human Services.

*Homeless* means—

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a State law.

*HUD* means the United States Department of Housing and Urban Development.

*ICH* means the Interagency Council on the Homeless.

*Landholding agency* means a Federal department or agency with statutory authority to control real property.

*Lease* means an agreement between either HHS for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100–526, 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

*Non-profit organization* means an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

*Permit* means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

*Property* means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

*Regional Homeless Coordinator* means a regional coordinator of the Interagency Council on the Homeless.

*Representative of the Homeless* means a State or local government agency, or private non-profit organization that provides, or proposes to provide, services to the homeless.

*Screen* means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

*State Homeless Coordinator* means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with the McKinney–Vento Homeless Assistance Act of 1987, as amended (42 U.S.C. 11320).

*Suitable property* means that HUD has determined that a particular property satisfies the criteria listed in § 102–75.1185.

*Surplus property* means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

*Underutilized* means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

*Unsuitable property* means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1185.

*Unutilized property* means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable Executive agency or occupied in caretaker status only.

## Applicability

### § 102–75.1165 What is the applicability of this subpart?

(a) This part applies to Federal real property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a court order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to 40 U.S.C. 523.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds, if title to the property is not held by a Federal landholding agency as defined in this part.

## Collecting the Information

### § 102–75.1170 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under 40 U.S.C. 524, Executive Order 12512, and subpart H of this part.

Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the **Federal Register**. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

## Suitability Determination

### § 102–75.1175 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties that were reported pursuant to the canvass described in § 102–75.1170(a), HUD will determine, under criteria set forth in § 102–75.1185, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1185.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1190(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the **Federal Register** of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the **Federal Register** that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the **Federal Register**.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in § 102–75.1160.

(3) The request for review must specify the grounds on which it is based, *i.e.*, that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § 102–75.1190(a), upon receipt of which HUD will promptly publish the determination in the **Federal Register**. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

## Real Property Reported Excess to GSA

### § 102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA that has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § 102–75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in § 102–75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § 102–75.1180(c) through § 102–75.1180(g).

(c) If a landholding agency reports a property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will

reflect any change in classification, *i.e.*, from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response that includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the **Federal Register**, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in § 102–75.965.

## Suitability Criteria

### § 102–75.1185 What are suitability criteria?

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial, commercial, or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers that provide the heating or power source for the property, and that meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, extensive deterioration, friable asbestos, PCBs, natural hazardous substances such as radon, periodic flooding, sinkholes, or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

(b) [Reserved]

## Determination of Availability

### § 102–75.1190 What is the policy concerning determination of availability statements?

(a) Within 45 days after receipt of a letter from HUD pursuant to § 102–75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in § 102–75.1185.

(2) In the case of excess property that had previously been reported to GSA—

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

## Public Notice of Determination

### § 102–75.1195 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the last–45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the **Federal Register** a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1–800–927–7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the **Federal Register**. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties reported pursuant to § 102–75.1170(b).

(e) HUD will publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the **Federal Register** will be available for

review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

## Application Process

### § 102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

(a) *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the **Federal Register**.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, Room 17A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if—

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a ''representative of the homeless,'' as specified in § 102–75.1160. The applicant must document its authority to hold real property. Private, non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions, except for, in the case of leasing the property, local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally-Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or disability in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR § 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed, in writing, the applicable unit of general local government responsible for providing sewer, water, police, and fire services of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant applying for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to § 102–75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for

completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in § 102–75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

## Action on Approved Applications

### § 102–75.1205 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property pursuant to a lease or permit.

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with § 102–75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under 40 U.S.C. 550 (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under 40 U.S.C. 550(c) or (d) (education and health uses).

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement that details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to 40 U.S.C. 550, and section 501(f) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 102–75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

## Unsuitable Properties

### § 102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency will defer, for 20 days after the date that notice of a property is published in the **Federal Register**, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA, if a representative of the homeless files an appeal of unsuitability pursuant to § 102–75.1175(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

## No Applications Approved

### § 102–75.1215 What action must be taken if there is no expression of interest?

(a) At the end of the 60-day holding period described in § 102–75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

## Subpart I—Screening of Federal Real Property

### § 102–75.1220 How do landholding agencies find out if excess Federal real property is available?

If agencies report excess real and related personal property to GSA, GSA conducts a ''Federal screening'' for the property. Federal screening consists of developing a ''Notice of Availability'' and circulating the ''Notice'' among all Federal landholding agencies for a maximum of 30 days.

### § 102–75.1225 What details are provided in the ''Notice of Availability''?

The ''Notice of Availability'' describes the physical characteristics of the property; it also provides information on location, hazards or restrictions, contact information, and a date by which an interested Federal agency must respond in writing to indicate a definite or potential need for the property.

### § 102–75.1230 How long does an agency have to indicate its interest in the property?

Generally, agencies have 30 days to express written interest in the property. However, sometimes GSA has cause to conduct an expedited screening of the real property and the time allotted for responding is less than 30 days. The Notice of Availability always contains a ''respond by'' date.

### § 102–75.1235 Where should an agency send its written response to the ''Notice of Availability''?

Look for the contact information provided in the Notice of Availability. Most likely, an agency will be directed to contact one of GSA's regional offices.

### § 102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA's ''Notice of Availability''?

An authorized official of the landholding agency must sign the written response to the Notice of Availability. An ''authorized official'' is one who is responsible for acquisition and/or disposal decisions (*e.g.*, head of the agency or official designee).

### § 102–75.1245 What happens after the landholding agency properly responds to a ''Notice of Availability''?

The landholding agency has 60 days (from the expiration date of the ''Notice of Availability'') to submit a formal transfer request for the property. Absent a formal request for transfer within the prescribed 60 days, GSA may, at its discretion, pursue other disposal options.

### § 102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?

If the written response to the ''Notice of Availability'' indicates a potential need, then the agency has an additional 30 days (from the expiration date of the ''Notice of Availability'') to determine whether or not its has a definite requirement for the property, and then 60 days to submit a transfer request.

### § 102–75.1255 What happens when more than one agency has a valid interest in the property?

GSA will attempt to facilitate an equitable solution between the agencies involved. However, the Administrator has final decision making authority in determining which requirement aligns with the Federal Government's best interests.

### § 102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?

No. GSA may waive the Federal screening for excess real property when it determines that doing so is in the best interest of the Federal Government.

Below is a sample list of some of the factors GSA may consider when making the decision to waive Federal screening. This list is a representative sample and is not all-inclusive:

(a) There is a known Federal need;

(b) The property is located within the boundaries of tribal lands;

(c) The property has known disposal limitations precluding further Federal use (*e.g.*, title and/or utilization restrictions; reported excess specifically for participation in the Relocation Program; reported excess for transfer to the current operating contractor who will continue production according to the terms of the disposal documents; directed for disposal by law or special legislation);

(d) The property will be transferred to a ''potentially responsible party'' (PRP) that stored, released, or disposed of hazardous substances at the Government-owned facility;

(e) The property is an easement;

(f) The excess property is actually a leasehold interest where there are Government-owned improvements with substantial value and cannot be easily removed;

(g) Government-owned improvements on Government-owned land, where the land is neither excess nor expected to become excess; or

(h) Screening for public benefit uses, except for the McKinney-Vento homeless screening, for specific property disposal considerations (see § 102–75.351).

### § 102–75.1265 Are extensions granted to the Federal screening and response timeframes?

Generally, no. GSA believes the timeframes are sufficient for agencies to make a decision and respond. Requests for extensions must be strongly justified and approved by the appropriate GSA Regional Administrator. For example, agencies may request an extension of time to submit their formal transfer request if they are not promptly provided GSA's estimate of FMV after submission of the initial expression of interest. Agencies requesting extensions must also submit an agreement accepting responsibility for providing and funding protection and maintenance for the requested property during the period of the extension until the property is transferred to the requesting agency or the requesting agency notifies GSA that it is no longer interested in the property. This assumption of protection and maintenance responsibility also applies to extensions associated with a requesting agency's request for an exception from the 100 percent reimbursement requirement (see § 102–75.205).

### § 102–75.1270 How does an agency request a transfer of Federal real property?

Agencies must use GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

### § 102–75.1275 Does a requesting agency have to pay for excess real property?

Yes. GSA is required by law to obtain full fair market value (as determined by the Administrator) for all real property (see § 102–75.190), except when a transfer without reimbursement has been authorized (see § 102–75.205). GSA, upon receipt of a valid expression of interest, will promptly provide each interested landholding agency with an estimate of fair market value for the property. GSA may transfer property without reimbursement, if directed to do so by law or special legislation and for the following purposes:

(a) Migratory Bird Management under Pub. L. 80–537, as amended by Pub. L. 92–432.

(b) Wildlife Conservation under Pub. L. 80–537.

(c) Federal Correctional facilities.

(d) Joint Surveillance System.

### § 102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?

GSA can redesignate surplus property as excess property, if the agency requests the property for use in direct support of its mission and GSA is satisfied that this transfer would be in

the best interests of the Federal Government.

**§ 102–75.1285 How does GSA transfer excess real property to the requesting agency?**

GSA transfers the property via letter assigning ''custody and accountability'' for the property to the requesting agency. Title to the property is held in the name of the United States; however, the requesting agency becomes the landholding agency and is responsible for providing and funding protection and maintenance for the property.

**§ 102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?**

(a) The requesting agency must assume protection and maintenance responsibilities for the property within 30 days of the date of the letter assigning custody and accountability for the property.

(b) After notifying the requesting agency, GSA may, at its discretion, pursue other disposal options.

■ 6. Revise part 102–76 to read as follows:

## PART 102–76—DESIGN AND CONSTRUCTION

### Subpart A—General Provisions

Sec.
102–76.5 What is the scope of this part?
102–76.10 What basic design and construction policy governs Federal agencies?

### Subpart B—Design and Construction

102–76.15 What are design and construction services?
102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?
102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?
102–76.30 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?

**National Environmental Policy Act of 1969**

102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?
102–76.40 To which real property actions does NEPA apply?
102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?

**Sustainable Development**

102–76.50 What is sustainable development?
102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?

### Subpart C—Architectural Barriers Act

102–76.60 To which facilities does the Architectural Barriers Act Apply?
102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?
102–76.70 When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?
102–76.75 What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in § 102–76.65(a)?
102–76.80 What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?
102–76.85 What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a)?
102–76.90 Who has the authority to waive or modify the standards in § 102–76.65(a)?
102–76.95 What recordkeeping responsibilities do Federal agencies have?

**Authority:** 40 U.S.C. 121(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583; E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340).

## Subpart A—General Provisions

**§ 102–76.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–76.10 What basic design and construction policy governs Federal agencies?**

Federal agencies, upon approval from GSA, are bound by the following basic design and construction policies:

(a) Provide the highest quality services for designing and constructing new Federal facilities and for repairing and altering existing Federal facilities. These services must be timely, efficient, and cost effective.

(b) Use a distinguished architectural style and form in Federal facilities that reflects the dignity, enterprise, vigor and stability of the Federal Government.

(c) Follow nationally recognized model building codes and other applicable nationally recognized codes that govern Federal construction to the maximum extent feasible and consider local building code requirements. (See 40 U.S.C. 3310 and 3312.)

(d) Design Federal buildings to have a long life expectancy and accommodate periodic changes due to renovations.

(e) Make buildings cost effective, energy efficient, and accessible to and usable by the physically disabled.

(f) Provide for building service equipment that is accessible for maintenance, repair, or replacement without significantly disturbing occupied space.

(g) Consider ease of operation when selecting mechanical and electrical equipment.

(h) Agencies must follow the prospectus submission and approval policy identified in §§ 102–73.35 and 102–73.40 of this chapter.

## Subpart B—Design and Construction

**§ 102–76.15 What are design and construction services?**

Design and construction services are—

(a) Site planning and landscape design;

(b) Architectural and interior design; and

(c) Engineering systems design.

**§ 102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?**

In providing site planning and design services, Federal agencies must—

(a) Make the site planning and landscape design a direct extension of the building design;

(b) Make a positive contribution to the surrounding landscape;

(c) Consider requirements (other than procedural requirements) of local zoning laws and laws relating to setbacks, height, historic preservation, and aesthetic qualities of a building;

(d) Identify areas for future building expansion in the architectural and site design concept for all buildings where an expansion need is identified to exist;

(e) Create a landscape design that is a pleasant, dynamic experience for occupants and visitors to Federal facilities and, where appropriate, encourage public access to and stimulate pedestrian traffic around the facilities. Coordinate the landscape design with the architectural characteristics of the building;

(f) Comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, for each project; and

(g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies, consistent with the Interagency Security Committee standards and guidelines.

**§ 102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?**

Federal agencies must design distinctive and high quality Federal facilities that meet all of the following standards:

(a) Reflect the local architecture in buildings through the use of building form, materials, colors, or detail. Express a quality of permanence in the building interior similar to the building exterior.

(b) Provide individuals with disabilities ready access to, and use of, the facilities in accordance with the standards in § 102–76.65.

(c) Use metric specifications in construction where the metric system is the accepted industry standard, and to the extent that such usage is economically feasible and practical.

(d) Provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of Government operations during civil disturbances, natural disasters and other emergency situations.

(e) Design and construct facilities that meet or exceed the energy performance standards applicable to Federal buildings in 10 CFR part 435.

**§ 102–76.30 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?**

Federal agencies must follow the seismic safety standards identified in § 102–80.45 of this chapter.

## National Environmental Policy Act of 1969

**§ 102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?**

The purpose of NEPA is to—

(a) Declare a national policy which will encourage productive and enjoyable harmony between man and his environment;

(b) Promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;

(c) Enrich the understanding of the ecological systems and natural resources important to the Nation; and

(d) Establish a Council on Environmental Quality (CEQ).

**§ 102–76.40 To which real property actions does NEPA apply?**

NEPA applies to actions that may have an impact on the quality of the human environment, including leasing, acquiring, developing, managing and disposing of real property.

**§ 102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?**

Federal agencies must follow the procedures identified in the Council on Environmental Quality's NEPA implementing regulations, 40 CFR 1500–1508. In addition, Federal agencies must follow the standards that they have promulgated to implement CEQ's regulations.

## Sustainable Development

**§ 102–76.50 What is sustainable development?**

Sustainable development means integrating the decision-making process across the organization, so that every decision is made to promote the greatest long-term benefits. It means eliminating the concept of waste and building on natural processes and energy flows and cycles; and recognizing the interrelationship of our actions with the natural world.

**§ 102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?**

In keeping with the objectives of Executive Order 13123, ''Greening of the Government Through Efficient Energy Management,'' and Executive Order 13101, ''Greening of the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' Federal agencies must apply sustainable development principles to the siting, design, and construction of new facilities, which include—

(a) Optimizing site potential;

(b) Minimizing non-renewable energy consumption;

(c) Using environmentally preferable products;

(d) Protecting and conserving water;

(e) Enhancing indoor environmental quality; and

(f) Optimizing operational and maintenance practices.

## Subpart C—Architectural Barriers Act

**§ 102–76.60 To which facilities does the Architectural Barriers Act apply?**

(a) The Architectural Barriers Act applies to any facility that is intended for use by the public or that may result in the employment or residence therein of individuals with disabilities, which is to be—

(1) Constructed or altered by, or on behalf of, the United States;

(2) Leased in whole or in part by the United States;

(3) Financed in whole or in part by a grant or loan made by the United States, if the building or facility is subject to standards for design, construction, or alteration issued under the authority of the law authorizing such a grant or loan; or

(4) Constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(b) The Architectural Barriers Act does not apply to any privately owned residential facility unless leased by the Government for subsidized housing programs, and any facility on a military reservation designed and constructed primarily for use by able bodied military personnel.

**§ 102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?**

(a) GSA adopts Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the Architectural Barriers Act Accessibility Standard. Facilities subject to the Architectural Barriers Act (other than facilities in 102–76.65(b) and (c)) must meet the Architectural Barriers Act Accessibility Standard if the construction or alteration commences, or the lease is entered into after May 8, 2006. If the construction or alteration commences, or the lease is entered into before May 8, 2006, the facility must meet the Uniform Federal Accessibility Standards. The construction or alteration of a facility for which plans and specifications were completed or substantially completed on or before May 8, 2006, is permitted to meet the Uniform Federal Accessibility Standards if the construction or alteration is commenced by May 8, 2008. The Architectural Barriers Act Accessibility Standard and the Uniform Federal Accessibility Standards are available at *www.access-board.gov*.

(b) Residential facilities subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service facilities subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

**§ 102–76.70 When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?**

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations when they exceed 20 percent of the costs of the alterations to the primary function area. If a series of small alterations are made to areas containing a primary function and the costs of any of the alterations considered individually would not result in providing an accessible path of travel to the altered areas, the total costs of the alterations made within the three year period after the initial alteration must be considered when determining whether the costs of alterations to provide an accessible path of travel to the altered areas are disproportionate. Facilities for which new leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations.

**§ 102–76.75 What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in § 102–76.65(a)?**

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function include the costs associated with—

(a) Providing an accessible route to connect the altered area and site arrival points, including but not limited to interior and exterior ramps, elevators and lifts, and curb ramps;

(b) Making entrances serving the altered area accessible, including but not limited to widening doorways and installing accessible hardware;

(c) Making restrooms serving the altered area accessible, including, but not limited to, enlarging toilet stalls, installing grab bars and accessible faucet controls, and insulating pipes under lavatories;

(d) Making public telephones serving the altered area accessible, including, but not limited to, placing telephones at an accessible height, and installing amplification devices and TTYs;

(e) Making drinking fountains serving the altered area accessible; and

(f) Making parking spaces serving the altered area accessible.

**§ 102–76.80 What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?**

For facilities subject to the standards in § 102–76.65(a), if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations, the path of travel must be made accessible to the extent possible without exceeding 20 percent of the costs of the alterations to the primary function area. Priority should be given to those elements that will provide the greatest access in the following order:

(a) An accessible route and an accessible entrance;

(b) At least one accessible restroom for each sex or a single unisex restroom;

(c) Accessible telephones;

(d) Accessible drinking fountains; and

(e) Accessible parking spaces.

**§ 102–76.85 What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a)?**

For purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a), a primary function area is an area that contains a major activity for which the leased facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the leased facility are carried out.

**§ 102–76.90 Who has the authority to waive or modify the standards in § 102–76.65(a)?**

The Administrator of General Services has the authority to waive or modify the standards in § 102–76.65(a) on a case-by-case basis if the agency head or GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary.

**§ 102–76.95 What recordkeeping responsibilities do Federal agencies have?**

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction or alteration of a facility and on each lease for a facility subject to the standards in § 102–76.65(a) containing one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards.

(4) The standards have been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a facility is not subject to the standards in § 102–76.65(a) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.

■ 7. Revise part 102–77 to read as follows:

## PART 102–77—ART-IN-ARCHITECTURE

**Subpart A—General Provisions**

Sec.
102–77.5 What is the scope of this part?
102–77.10 What basic Art-in-Architecture policy governs Federal agencies?

**Subpart B—Art-in-Architecture**

102–77.15 Who funds the Art-in-Architecture efforts?
102–77.20 With whom should Federal agencies collaborate when commissioning and selecting art for Federal buildings?
102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-Architecture?

**Authority:** 40 U.S.C. 121 and 3306.

### Subpart A—General Provisions

**§ 102–77.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–77.10 What basic Art-in-Architecture policy governs Federal agencies?**

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings, and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture, and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

## Subpart B—Art-in-Architecture

### § 102–77.15 Who funds the Art-in-Architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art-in-Architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings, or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisition, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

### § 102–77.20 With whom should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual, and historic interests and values of a community. In addition, Federal agencies should work collaboratively with the architect of the building and art professionals, when commissioning and selecting art for Federal buildings. Federal agencies should commission artwork that is diverse in style and media.

### § 102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-Architecture?

Yes, Federal agencies should provide Art-in-Architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

■ 8. Revise part 102–78 to read as follows:

# PART 102–78—HISTORIC PRESERVATION

## Subpart A—General Provisions

Sec.

102–78.5 What is the scope of this part?
102–78.10 What basic historic preservation policy governs Federal agencies?

## Subpart B—Historic Preservation

102–78.15 What are historic properties?
102–78.20 Are Federal agencies required to identify historic properties?
102–78.25 What is an undertaking?
102–78.30 Who are consulting parties?
102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?
102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects an historic or cultural property?
102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?
102–78.50 What historic preservation services must Federal agencies provide?
102–78.55 For which properties must Federal agencies provide historic preservation services?
102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?
102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?
102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

**Authority:** 16 U.S.C. 470h–2; 40 U.S.C. 121(c) and 581.

## Subpart A—General Provisions

### § 102–78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

### § 102–78.10 What basic historic preservation policy governs Federal agencies?

To protect, enhance and preserve historic and cultural property under their control, Federal agencies must consider the effects of their undertakings on historic and cultural properties and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

## Subpart B—Historic Preservation

### § 102–78.15 What are historic properties?

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

### § 102–78.20 Are Federal agencies required to identify historic properties?

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

### § 102–78.25 What is an undertaking?

The term undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those—

(a) Carried out by or on behalf of the agency;

(b) Carried out with Federal financial assistance; or

(c) Requiring a Federal permit, license, or approval.

### § 102–78.30 Who are consulting parties?

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (*i.e.*, Section 106 of the National Historic Preservation Act), which requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; other individuals and organizations with a demonstrated interest in the undertaking; and the Advisory Council (if it elects to participate in the consultation).

### § 102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

### § 102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property

until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that it is feasible and prudent to do so. Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

**§ 102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?**

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

**§ 102–78.50 What historic preservation services must Federal agencies provide?**

Federal agencies must provide the following historic preservation services:

(a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property.

(b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.

**§ 102–78.55 For which properties must Federal agencies assume historic preservation responsibilities?**

Federal agencies must assume historic preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control of other Federal agencies must obtain approval from the agency having custody and control of the building.

**§ 102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?**

Yes, Executive Order 13006 requires Federal agencies that have a mission requirement to locate in an urban area to give first consideration to space in historic buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent to space in historic buildings and districts, in accordance with §§ 102–73.120 and 102–73.125 of this chapter.

**§ 102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?**

Federal agencies must—

(a) To the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of the Interior's approval of the plans of transferees of surplus Federally-owned historic properties; and

(b) Review all proposed excess actions to identify any properties listed in or eligible for listing in the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

**§ 102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?**

Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National Historic Preservation Act responsibilities.

■ 9. Revise part 102–79 to read as follows:

## PART 102–79—ASSIGNMENT AND UTILIZATION OF SPACE

**Subpart A—General Provisions**

Sec.
102–79.5 What is the scope of this part?
102–79.10 What basic assignment and utilization of space policy governs an Executive agency?

**Subpart B—Assignment and Utilization of Space**

102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

**Assignment of Space**

102–79.20 What standard must Executive agencies promote when assigning space?

**Child Care**

102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?

**Fitness Centers**

102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?
102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

**Federal Credit Unions**

102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?
102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

**Utilization of Space**

102–79.50 What standard must Executive agencies promote in their utilization of space?
102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?
102–79.60 Are agencies required to use historic properties available to the agency?

**Outleasing**

102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?

**Siting Antennas on Federal Property**

102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?
102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?
102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?
102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?
102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?
102–79.95 Who is responsible for the costs associated with providing access to antenna sites?
102–79.100 What must Federal agencies do with antenna siting fees that they collect?

**Integrated Workplace**

102–79.105 What is the Integrated Workplace?
102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?
102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?

**Public Access Defibrillation Programs**

102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

**Authority:** 40 U.S.C. 121(c); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; and E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

### Subpart A—General Provisions

**§ 102–79.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or

subject to, the authorities of the Administrator of General Services.

**§ 102–79.10 What basic assignment and utilization of space policy governs an Executive agency?**

Executive agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, meets the needs of the occupant agencies, and provides child care and physical fitness facilities in the workplace when adequately justified. An Executive agency must promote maximum utilization of Federal workspace, consistent with mission requirements, to maximize its value to the Government.

## Subpart B—Assignment and Utilization of Space

**§ 102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?**

Executive agencies must provide assignment and utilization services that will maximize the value of Federal real property resources and improve the productivity of the workers housed therein.

### Assignment of Space

**§ 102–79.20 What standard must Executive agencies promote when assigning space?**

Executive agencies must promote the optimum use of space for each assignment at an economical cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

### Child Care

**§ 102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?**

Yes, in accordance with 40 U.S.C. 590, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if such—

(a) Space is available;

(b) Agency determines that such space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian who is a Federal Government employee; and

(c) Agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

### Fitness Centers

**§ 102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?**

Yes, in accordance with 5 U.S.C. 7901, Federal agencies can allot space in Federal buildings for establishing fitness programs.

**§ 102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?**

Federal agencies must address the following elements in their planning effort for establishing fitness programs:

(a) A survey indicating employee interest in the program.

(b) A three-to five-year implementation plan demonstrating long-term commitment to physical fitness/health for employees.

(c) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities.

(d) Identification of a person skilled in prescribing exercise to direct the fitness program.

(e) An approach that will consider key health behavior related to degenerative disease, including smoking and nutrition.

(f) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility.

(g) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

### Federal Credit Unions

**§ 102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?**

Yes, in accordance with 12 U.S.C. 1770, Federal agencies may allot space in Federal buildings to Federal credit unions without charge for rent or services if—

(a) At least 95 percent of the membership of the credit union to be served by the allotment of space 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; and

(b) Space is available.

**§ 102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?**

Federal agencies may provide without charge to Federal credit union services such as—

(a) Lighting;

(b) Heating and cooling;

(c) Electricity;

(d) Office furniture;

(e) Office machines and equipment;

(f) Telephone service (including installation of lines and equipment and other expenses associated with telephone service); and

(g) Security systems (including installation and other expenses associated with security systems).

### Utilization of Space

**§ 102–79.50 What standard must Executive agencies promote in their utilization of space?**

Executive agencies, when acquiring or utilizing Federally owned or leased space under Title 40 of the United States Code, must promote efficient utilization of space. Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through the issuance of permits, licenses or leases to non-Federal entities to the extent authorized by law. (For vacant property determined excess to agency needs, refer to part 102-75, Real Property Disposal.)

**§ 102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?**

Yes, Federal agencies must—

(a) First utilize space in Government-owned and Government-leased buildings; and

(b) If there is no suitable space in Government-owned and Government-leased buildings, utilize space in buildings under the custody and control of the U.S. Postal Service; and

(c) If there is no suitable space in buildings under the custody and control of the U.S. Postal Service, agencies may acquire real estate by lease, purchase, or construction, as specified in part 102–73 of this chapter.

**§ 102–79.60 Are agencies required to use historic properties available to the agency?**

Yes, Federal agencies must assume responsibility for the preservation of the historic properties they own or control. Prior to acquiring, constructing or leasing buildings, agencies must use, to the maximum extent feasible, historic properties already owned or leased by the agency (16 U.S.C. 470h–2).

### Outleasing

**§ 102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?**

Yes. Authority to execute such outleases may be delegated by the Administrator based on authorities provided by the Public Buildings

Cooperative Use Act (40 U.S.C. § 581(h)), the proceeds of which are to be deposited into GSA's Federal Buildings Fund. Using such authority, Executive agencies, upon approval from GSA, may—

(a) Enter into leases of space on major public access levels, courtyards and rooftops of any public building with persons, firms, or organizations engaged in commercial, cultural, educational, or recreational activities (as defined in 40 U.S.C. 3306);

(b) Establish rental rates for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building; and

(c) Use leases that contain terms and conditions that the Administrator deems necessary to promote competition and protect the public interest.

## Siting Antennas on Federal Property

### § 102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?

Yes. Executive agencies, upon approval from GSA, may assess fees for placement of antennas and supporting services against other agencies (that own these antennas) under 40 U.S.C. 586(c) and 40 U.S.C. 121(e). Unless a differing rate has been approved by the Administrator, such fees or charges must approximate commercial charges for comparable space and services (*i.e.*, market rates). The proceeds from such charges or fees must be credited to the appropriation or fund initially charged for providing the space or services. Any amounts in excess of actual operating and maintenance costs must be credited to miscellaneous receipts unless otherwise provided by law. The charges or fees assessed by the Administrator for the placement of antennas and supporting services in GSA-controlled space are generally credited to GSA's Federal Buildings Fund.

### § 102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

Yes. Executive agencies in GSA-controlled space, upon approval from GSA, may assess fees for antenna placements against public service organizations under 40 U.S.C. 581(h) and 40 U.S.C. 121(e). Such fees or rental rates must be equivalent to the prevailing commercial rate for comparable space devoted to commercial antenna placements in the vicinity of the public building and the proceeds from such charges or fees must be credited to GSA's Federal Buildings Fund.

### § 102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

Yes. GSA, or other Executive agencies, upon approval from GSA, may charge fees based on market value to telecommunication service providers for antenna placements in public buildings. Market value should be equivalent to the prevailing commercial rate for comparable space for commercial antenna placements in the vicinity of the public building. Such fees must be credited to GSA's Federal Buildings Fund.

### § 102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?

Executive agencies will make antenna sites available on a fair, reasonable, and nondiscriminatory basis. Collocation of antennas should be encouraged where there are multiple antenna siting requests for the same location. In cases where this is not feasible and space availability precludes accommodating all antenna siting applicants, competitive procedures may be used. This should be done in accordance with applicable Federal, State and local laws and regulations, and consistent with national security concerns. In making antenna sites available, agencies must avoid electromagnetic intermodulations and interferences. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget.

### § 102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?

When evaluating antenna siting requests, Executive agencies must consider issues such as—

(a) Public health and safety with respect to the antenna installation and maintenance;

(b) Aesthetics;

(c) Effects on historic districts, sites, buildings, monuments, structures, or other objects pursuant to the National Historic Preservation Act of 1966, as amended, and implementing regulations;

(d) Protection of natural and cultural resources (*e.g.*, National Parks and Wilderness areas, National Wildlife Refuge systems);

(e) Compliance with the appropriate level of review and documentation as necessary under the National Environmental Policy Act of 1969, as amended, and implementing regulations of each Federal department and agency responsible for the antenna siting project, and the Federal Aviation Administration, the National Telecommunications and Information Administration, and other relevant departments and agencies;

(f) Compliance with the Federal Communications Commission's (FCC) guidelines for radiofrequency exposure, ET Docket No. 93–62, entitled ''Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation,'' issued August 1, 1996, and any other order on reconsideration relating to radiofrequency guidelines and their enforcement. These are updated guidelines for meeting health concerns that reflect the latest scientific knowledge in this area, and are supported by Federal health and safety agencies such as the Environmental Protection Agency and the Food and Drug Administration; and

(g) Any requirements of the Federal agency managing the facility, FCC, Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget. In addition, the National Capital Planning Commission should be consulted for siting requests within the Washington, D.C. metropolitan area.

### § 102–79.95 Who is responsible for the costs associated with providing access to antenna sites?

The telecommunications service provider is responsible for any reasonable costs to Federal agencies associated with providing access to antenna sites, including obtaining appropriate clearance of provider personnel for access to buildings or land deemed to be security sensitive as is done with service contractor personnel. OMB Circular A–25, entitled ''User

Charges,'' revised July 8, 1993, provides guidelines that agencies should use to assess fees for Government services and for the sale or use of Government property or resources. For antenna sites on non-GSA property, see also the Department of Commerce Report on ''Improving Rights-of-Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment'' (April 2004) beginning at page 26. Under 40 U.S.C. 1314, GSA is covered in granting easements and permits to support the installation of antennas and cabling across raw land in support of constructing new and improving existing telecommunication infrastructures provided that such installation does not negatively impact on the Government.

#### § 102–79.100 What must Federal agencies do with antenna siting fees that they collect?

The account into which an antenna siting fee is to be deposited depends on the authority under which the antenna site is made available and the fee assessed. For GSA-controlled property outleased under 40 U.S.C. 581(h) or section 412 of Division H of public law 108–447, the fee is to be deposited into GSA's Federal Building Fund. For surplus property outleased under 40 U.S.C. 543, the fee is to be deposited in accordance with the provisions of Subchapter IV of Chapter 5 of Subtitle I of Title 40 of the United States Code. For siting fees collected under other statutory authorities, the fees might be deposited into miscellaneous receipts, an account of the landholding agency, or as otherwise provided by law. Federal agencies should consult with their agency's legal advisors before depositing antenna proceed from sites on agency-controlled Federal property.

### Integrated Workplace

#### § 102–79.105 What is the Integrated Workplace?

The Integrated Workplace, developed by the GSA Office of Governmentwide Policy, is a comprehensive, multidisciplinary approach to developing workspace and work strategies that best support an organization's strategic business goals and work processes, and have the flexibility to accommodate the changing needs of the occupants and the organization. Integrated Workplace concepts support the objectives of Executive Order 13327, ''Federal Real Property Asset Management,'' which calls for the enhancement of Federal agency productivity through an improved working environment.

#### § 102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?

Federal agencies must strive to design work places that—

(a) Are developed using sustainable development concepts (see § 102–76.55);

(b) Align with the organization's mission and strategic plan;

(c) Serve the needs and work practices of the occupants;

(d) Can be quickly and inexpensively adjusted by the user to maximize his or her productivity and satisfaction;

(e) Are comfortable, efficient, and technologically advanced and allow people to accomplish their work in the most efficient way;

(f) Meet the office's needs and can justify its cost through the benefits gained;

(g) Are developed with an integrated building systems approach;

(h) Are based on a life cycle cost analysis that considers both facility and human capital costs over a substantial time period; and

(i) Support alternative workplace arrangements, including telecommuting, hoteling, virtual offices, and other distributive work arrangements (see Part 102–74, Subpart F—Telework).

#### § 102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?

The GSA Office of Governmentwide Policy provides additional guidance in its publication entitled ''Innovative Workplace Strategies.''

### Public Access Defibrillation Programs

#### § 102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

Federal agencies electing to establish a public access defibrillation program in a Federal facility must follow the guidelines, entitled ''Guidelines for Public Access Defibrillation Programs in Federal Facilities,'' which can be obtained from the Office of Governmentwide Policy, Office of Real Property (MP), General Services Administration, 1800 F Street, NW, Washington, DC 20405.

■ 10. Revise part 102–80 to read as follows:

## PART 102–80—SAFETY AND ENVIRONMENTAL MANAGEMENT

### Subpart A—General Provisions

Sec.
102–80.5 What is the scope of this part?
102–80.10 What are the basic safety and environmental management policies for real property?

### Subpart B—Safety and Environmental Management

**Asbestos**
102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

**Radon**
102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

**Indoor Air Quality**
102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

**Lead**
102–80.30 What are Federal agencies' responsibilities concerning lead?

**Hazardous Materials and Wastes**
102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

**Underground Storage Tanks**
102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

**Seismic Safety**
102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

**Risks and Risk Reduction Strategies**
102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?
102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

**Facility Assessments**
102–80.60 Are Federal agencies responsible for performing facility assessments?

**Incident Investigation**
102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

**Responsibility for Informing Tenants**
102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

**Assessment of Environmental Issues**
102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

### Subpart C—Accident and Fire Prevention

102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

**State and Local Codes**
102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

**Fire Administration Authorization Act of 1992**

102–80.90 Is the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) relevant to fire protection engineering?

102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

**Automatic Sprinkler Systems**

102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

**Equivalent Level of Safety Analysis**

102–80.105 What information must be included in an equivalent level of safety analysis?

102–80.110 What must an equivalent level of safety analysis indicate?

102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

102–80.130 Who must perform the equivalent level of safety analysis?

102–80.135 Who is a qualified fire protection engineer?

**Room of Origin**

102–80.140 What is meant by ''room of origin''?

**Flashover**

102–80.145 What is meant by ''flashover''?

**Reasonable Worst Case Fire Scenario**

102–80.150 What is meant by ''reasonable worst case fire scenario''?

**Authority:** 40 U.S.C. 121(c) and 581–593.

## Subpart A—General Provisions

### § 102–80.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The responsibilities for safety and environmental management under this part are intended to apply to GSA or those Federal agencies operating in GSA space pursuant to a GSA delegation of authority.

### § 102–80.10 What are the basic safety and environmental management policies for real property?

The basic safety and environmental management policies for real property are that Federal agencies must—

(a) Provide for a safe and healthful work environment for Federal employees and the visiting public;

(b) Protect Federal real and personal property;

(c) Promote mission continuity;

(d) Provide reasonable safeguards for emergency forces if an incident occurs;

(e) Assess risk;

(f) Make decision makers aware of risks; and

(g) Act promptly and appropriately in response to risk.

## Subpart B—Safety and Environmental Management

### Asbestos

### § 102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

Federal agencies have the following responsibilities concerning the assessment and management of asbestos:

(a) Inspect and assess buildings for the presence and condition of asbestos-containing materials. Space to be leased must be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to U.S. Environmental Protection Agency (EPA) guidance must be implemented.

(b) Manage in-place asbestos that is in good condition and not likely to be disturbed.

(c) Abate damaged asbestos and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos.

(d) Not use asbestos in new construction, renovation/modernization or repair of their owned or leased space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section.

(e) Communicate all written and oral asbestos information about the leased space to tenants.

### Radon

### § 102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

Federal agencies have the following responsibilities concerning the abatement of radon in space when radon levels exceed current EPA standards:

(a) Retest abated areas and make lessors retest, as required, abated areas to adhere to EPA standards.

(b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must retest, as required, to adhere to EPA standards.

### Indoor Air Quality

### § 102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Federal agencies must assess indoor air quality of buildings as part of their safety and environmental facility assessments. Federal agencies must respond to tenant complaints on air quality and take appropriate corrective action where air quality does not meet applicable standards.

### Lead

### § 102–80.30 What are Federal agencies' responsibilities concerning lead?

Federal agencies have the following responsibilities concerning lead in buildings:

(a) Test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces.

(b) Not remove lead based paint from surfaces in good condition.

(c) Test all painted surfaces for lead in proposed or existing child care centers.

(d) Abate lead-based paint found in accordance with U.S. Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines, available by writing to HUD USER, P.O. Box 6091, Rockville, MD 20850.

(e) Test potable water for lead in all drinking water outlets.

(f) Take corrective action when lead levels exceed the HUD Guidelines.

### Hazardous Materials and Wastes

### § 102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes are as follows:

(a) Monitor the transport, use, and disposition of hazardous materials and waste in buildings to provide for compliance with GSA, Occupational Safety and Health Administration (OSHA), Department of Transportation, EPA, and applicable State and local requirements. In addition to those operating in GSA space pursuant to a delegation of authority, tenants in GSA space must comply with these requirements.

(b) In leased space, include in all agreements with the lessor requirements that hazardous materials stored in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

### Underground Storage Tanks

#### § 102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Federal agencies have the following responsibilities concerning the management of underground storage tanks in real property:

(a) Register, manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and applicable State and local requirements.

(b) Require the party responsible for tanks they use but do not own to follow these requirements and to be responsible for the cost of compliance.

### Seismic Safety

#### § 102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

Federal agencies must follow the standards issued by the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings.

### Risks and Risk Reduction Strategies

#### § 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental management risks and appropriate risk reduction strategies for buildings. Federal agencies occupying as well as operating buildings must identify any safety and environmental management risks and report or correct the situation, as appropriate. Federal agencies must use the applicable national codes and standards as a guide for their building operations.

#### § 102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

Yes, Federal agencies must manage the execution of risk reduction projects in buildings they operate. Federal agencies must identify and take appropriate action to eliminate hazards and regulatory noncompliance.

### Facility Assessments

#### § 102–80.60 Are Federal agencies responsible for performing facility assessments?

Yes, Federal agencies must evaluate facilities to comply with GSA's safety and environmental program and applicable Federal, State and local environmental laws and regulations. Federal agencies should conduct these evaluations in accordance with schedules that are compatible with repair and alteration and leasing operations.

### Incident Investigation

#### § 102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Federal agencies have the following responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents in buildings they operate:

(a) Investigate all incidents regardless of severity.

(b) Form Boards of Investigation for incidents resulting in serious injury, death, or significant property losses.

### Responsibility for Informing Tenants

#### § 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Yes, Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

### Assessment of Environmental Issues

#### § 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Federal agencies must assess required environmental issues throughout planning and project development so that the environmental impacts of a project are considered during the decision making process.

## Subpart C—Accident and Fire Prevention

#### § 102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

Federal agencies must—

(a) Comply with the occupational safety and health standards established in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596); Executive Order 12196; 29 CFR part 1960; and applicable safety and environmental management criteria identified in this part;

(b) Not expose occupants and visitors to unnecessary risks;

(c) Provide safeguards that minimize personal harm, property damage, and impairment of Governmental operations, and that allow emergency forces to accomplish their missions effectively;

(d) Follow accepted fire prevention practices in operating and managing buildings;

(e) To the maximum extent feasible, comply with one of the nationally recognized model building codes and with other nationally-recognized codes in their construction or alteration of each building in accordance with 40 U.S.C. 3312; and

(f) Use the applicable national codes and standards as a guide for their building operations.

### State and Local Codes

#### § 102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

Federally owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 3312, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local code requirements and inspection.

### Fire Administration Authorization Act of 1992

#### § 102–80.90 Is the Fire Administration Authorization Act of 1992 (Public Law 102–522) relevant to fire protection engineering?

Yes, the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) requires sprinklers or an equivalent level of safety in certain types of Federal employee office buildings, Federal employee housing units, and Federally assisted housing units (15 U.S.C. 2227).

#### § 102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

Yes, the Fire Administration Authorization Act applies to all Federal agencies and all Federally owned and leased buildings in the United States.

### Automatic Sprinkler Systems

#### § 102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

The performance objective of the automatic sprinkler system is that it must be capable of protecting human lives. Sprinklers should be capable of controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

## Equivalent Level of Safety Analysis

### § 102–80.105 What information must be included in an equivalent level of safety analysis?

The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities that impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues that must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

### § 102–80.110 What must an equivalent level of safety analysis indicate?

To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Fire Administration Authorization Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed.

### § 102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

Yes, the following are three options for establishing that an equivalent level of safety exists:

(a) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egress time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed reasonable worst case fire scenarios including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an equivalent level of safety.

(b) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an equivalent level of safety.

(c) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

### § 102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101A) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

### § 102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

The head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted equivalent level of safety analysis and provide copies to fire departments or other local authorities for use in developing pre-fire plans.

### § 102–80.130 Who must perform the equivalent level of safety analysis?

A qualified fire protection engineer must perform the equivalent level of safety analysis.

### § 102–80.135 Who is a qualified fire protection engineer?

A qualified fire protection engineer is defined as an individual with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(a) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or fire safety engineering, plus a minimum of 4 years work experience in fire protection engineering.

(b) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering.

(c) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

## Room of Origin

### § 102–80.140 What is meant by ''room of origin''?

Room of origin means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m2 (2000 ft2), including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the room of origin to the extent it did not exceed the 200 m2 (2000 ft2) limitation.

**Flashover**

**§ 102–80.145 What is meant by ''flashover''?**

Flashover means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m2 (1.8 Btu/ft2/sec).

**Reasonable Worst Case Fire Scenario**

**§ 102–80.150 What is meant by ''reasonable worst case fire scenario''?**

Reasonable worst case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire that would have a significant adverse impact on the building and its occupants. The development of reasonable worst case scenarios must include consideration of types and forms of fuels present (*e.g.*, furniture, trash, paper, chemicals), potential fire ignition locations (*e.g.*, bedroom, office, closet, corridor), occupant capabilities (*e.g.*, awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

■ 11. Revise part 102–81 to read as follows:

## PART 102–81—SECURITY

### Subpart A—General Provisions

Sec.

102–81.5 What is the scope of this part?
102–81.10 What basic security policy governs Federal agencies?

### Subpart B—Security

102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased facility?
102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?
102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?
102–81.30 What information must job applicants at child care centers reveal?

**Authority:** 40 U.S.C. 121(c), 581–593, and 1315.

### Subpart A—General Provisions

**§ 102–81.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–81.10 What basic security policy governs Federal agencies?**

Federal agencies on Federal property under the charge and control of the Administrator and having a security delegation of authority from the Secretary of the Department of Homeland Security must provide for the security and protection of the real estate they occupy, including the protection of persons within the property.

### Subpart B—Security

**§ 102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased facility?**

In a June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled ''Upgrading Security at Federal Facilities'' (see the Weekly Compilation of Presidential Documents, vol. 31, p. 1148), the President directed that Executive agencies must, where feasible, upgrade and maintain security in facilities they own or lease under their own authority to the minimum standards specified in the Department of Justice's June 28, 1995, study entitled ''Vulnerability Assessment of Federal Facilities.'' The study may be obtained by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

**§ 102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?**

No, the minimum standards specified in the Department of Justice's June 28, 1995, study entitled ''Vulnerability Assessment of Federal Facilities'' identifies the minimum-security standards that agencies must adhere to for all existing owned and leased Federal facilities. As specified in § 102–81.25, new Federally owned and leased facilities must be designed to meet the standards identified in the document entitled ''Interagency Security Committee Security Design Criteria for New Federal Office Buildings and Major Modernization Projects,'' dated May 28, 2001. The security design criteria for new facilities takes into consideration technology developments, new cost consideration, the experience of practitioners applying the criteria, and the need to balance security requirements with public building environments that remain lively, open, and accessible.

**§ 102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?**

No, the Interagency Security Committee Security Design Criteria—

(a) Apply to new construction of general purpose office buildings and new or lease-construction of courthouses occupied by Federal employees in the United States and not under the jurisdiction and/or control of the Department of Defense. The criteria also apply to lease-construction projects being submitted to Congress for appropriations or authorization. Where prudent and appropriate, the criteria apply to major modernization projects; and

(b) Do not apply to airports, prisons, hospitals, clinics, and ports of entry, or to unique facilities such as those classified by the Department of Justice Vulnerability Assessment Study as Level V. Nor will the criteria overrule existing Federal laws and statutes, and other agency standards that have been developed for special facilities, such as border stations and child care centers.

**§ 102–81.30 What information must job applicants at child care centers reveal?**

Anyone who applies for employment (including volunteer positions) at a child care facility, located on Federally controlled property (including Federally leased property), must reveal any arrests and convictions on the job application. Employment at a child care facility means any position that involves work with minor children, such as a teacher, daycare worker, or school administrator.

■ 12. Revise part 102–82 to read as follows:

## PART 102–82—UTILITY SERVICES

### Subpart A—General Provisions

Sec.

102–82.5 What is the scope of this part?
102–82.10 What basic utility services policy govern Executive agencies?

### Subpart B—Utility Services

102–82.15 What utility services must Executive agencies provide?
102ndash;82.20 What are Executive agencies' rate intervention responsibilities?
102–82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

**Authority:** 40 U.S.C. 121(c) and 501.

### Subpart A—General Provisions

**§ 102–82.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or

subject to, the authorities of the Administrator of General Services.

### § 102–82.10 What basic utility services policy govern Executive agencies?

Executive agencies procuring, managing or supplying utility services under Title 40 of the United States Code must provide or procure services that promote economy and efficiency with due regard to the mission responsibilities of the agencies concerned.

## Subpart B—Utility Services

### § 102–82.15 What utility services must Executive agencies provide?

Executive agencies must negotiate with public utilities to procure utility services and, where appropriate, provide rate intervention services in proceedings (see §§ 102–72.100 and 102–72.105 of this chapter) before Federal and State utility regulatory bodies.

### § 102–82.20 What are Executive agencies' rate intervention responsibilities?

Where the consumer interests of the Federal Government will be significantly affected and upon receiving a delegation of authority from GSA, Executive agencies must provide representation in proceedings involving utility services before Federal and State regulatory bodies. Specifically, these responsibilities include instituting formal or informal action before Federal and State regulatory bodies to contest the level, structure, or applicability of rates or service terms of utility suppliers. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security.

### § 102–82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense, when the Secretary determines it to be in the best interests of national security, must provide for the procurement of utility services (such as commodities and utility rebate programs), as required, and must procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service. Executive agencies, upon receiving a delegation of authority from GSA, may enter into contracts for utility services for periods not exceeding ten years (40 U.S.C. 501(b)(1)(B)).

■ 13. Revise part 102–83 to read as follows:

# PART 102–83—LOCATION OF SPACE

## Subpart A—General Provisions

Sec.
102–83.5 What is the scope of this part?
102–83.10 What basic location of space policy governs an Executive agency?
102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

## Subpart B—Location of Space

**Delineated Area**

102–83.20 What is a delineated area?
102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?
102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?
102–83.35 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?
102–83.40 Who must approve the final delineated area?
102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

**Rural Areas**

102–83.50 What is the Rural Development Act of 1972?
102–83.55 What is a rural area?
102–83.60 What is an urbanized area?
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Appendix to Part 102–83—Memorandum of Understanding Between the Department of Housing and Urban Development and the General Services Administration Concerning Low- and Moderate-Income Housing

**Authority:** 40 U.S.C. 121(c); E.O. 12072; and E.O. 13006.

## Subpart A—General Provisions

### § 102–83.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

### § 102–83.10 What basic location of space policy governs an Executive agency?

Each Executive agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies.

### § 102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Yes, Federal agencies must follow the hierarchy of consideration identified in § 102–79.55 of this chapter.

## Subpart B—Location of Space

### Delineated Area

### § 102–83.20 What is a delineated area?

Delineated area means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

### § 102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive Orders.

**§ 102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?**

Yes, Federal agencies must also consider real estate, labor, and other operational costs and applicable local incentives, when identifying the delineated area.

**§ 102–83.35 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?**

In accordance with the Competition in Contracting Act of 1984, as amended (41 U.S.C. 253(a)), Executive agencies must consider whether restricting the delineated area for obtaining leased space to the central business area (CBA) will provide for adequate competition when acquiring leased space. Where an Executive agency determines that the delineated area must be expanded beyond the CBA to provide adequate competition, the agency may expand the delineated area in consultation with local officials. Executive agencies must continue to include the CBA in such expanded areas.

**§ 102–83.40 Who must approve the final delineated area?**

Federal agencies conducting the procurement must approve the final delineated area for site acquisitions and lease actions and must confirm that the final delineated area complies with the requirements of all applicable laws, regulations, and Executive Orders.

**§ 102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?**

GSA's PBS provides guidance in its Customer Guide to Real Property on the process for appealing GSA's decisions and recommendations concerning delineated areas.

## Rural Areas

**§ 102–83.50 What is the Rural Development Act of 1972?**

The Rural Development Act of 1972, as amended (7 U.S.C. 2204b–1), directs Federal agencies to develop policies and procedures to give first priority to the location of new offices and other Federal facilities in rural areas. The intent of the Rural Development Act is to revitalize and develop rural areas and to help foster a balance between rural and urban America.

**§ 102–83.55 What is a rural area?**

As defined in 7 U.S.C. 1991(a)(13)(A), rural area means any area other than—

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town.

**§ 102–83.60 What is an urbanized area?**

An urbanized area is a statistical geographic area defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

**§ 102–83.65 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?**

Yes, Executive agencies must give first priority to the location of new offices and other facilities in rural areas in accordance with the Rural Development Act (7 U.S.C. 2204b–1), unless their mission or program requirements call for locations in an urban area. First priority to the location of new offices and other facilities in rural areas must be given in accordance with the hierarchy specified in § 102–79.55 of this chapter.

## Urban Areas

**§ 102–83.70 What is Executive Order 12072?**

Executive Order 12072, entitled ''Federal Space Management,'' requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in central business areas, and/or adjacent areas of similar character, to use them to make downtowns attractive places to work, conserve existing resources, and encourage redevelopment. It also directs Executive agencies to consider opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

**§ 102–83.75 What is Executive Order 13006?**

Executive Order 13006, entitled ''Locating Federal Facilities on Historic Properties in Our Nation's Central Cities,'' requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in historic buildings and districts within central business areas. It also directs Executive agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation program.

**§ 102–83.80 What is an urban area?**

Urban area means any metropolitan area (MA) as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04, or succeeding OMB Bulletin, that does not meet the definition of rural area in § 102–83.55.

**§ 102–83.85 What is a central business area?**

Central business area (CBA) means the centralized community business area and adjacent areas of similar character, including other specific areas that may be recommended by local officials in accordance with Executive Order 12072. The CBAs are designated by local government and not by Federal agencies.

**§ 102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?**

No, Executive Orders 12072 and 13006 only apply to agencies looking for space in urban areas.

**§ 102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?**

After an agency identifies its geographic service area and delineated area within which it wishes to locate specific activities are in an urban area (*i.e.*, determined that the agency's mission requirements dictate a need to locate its facility in an urban area), Federal agencies must seek space in historic properties already under agency control, in accordance with section 110 of the National Historic Preservation Act. The National Historic Preservation Act provides that prior to purchasing, constructing or leasing new space, Federal agencies must—

(a) Consider agency-controlled historic properties within historic districts inside CBAs when locating Federal operations, in accordance with Executive Order 13006 (which, by reference, also incorporates the requirements in Executive Order 12072 and the Rural Development Act of 1972);

(b) Then consider agency-controlled developed or undeveloped sites within historic districts, if no suitable agency-controlled historic property specified in paragraph (a) of this section is available;

(c) Then consider agency-controlled historic properties outside of historic districts, if no suitable agency-controlled site exists within a historic district as specified in paragraph (b) of this section;

(d) Then consider non-historic agency-controlled properties, if no suitable agency-controlled historic properties outside of historic districts

exist as specified in paragraph (c) of this section;

(e) Then consider historic properties under the custody and control of the U.S. Postal Service, if there is no available space in non-historic agency-controlled properties specified in paragraph (d) of this section.

(f) Then consider non-historic properties under the custody and control of the U.S. Postal Service, if there is no available space in historic properties under the custody and control of the U.S. Postal Service specified in paragraph (e) of this section.

**§ 102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?**

See § 102–73.20 of this chapter.

**§ 102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?**

If no suitable space in non-historic buildings under the custody and control of the U.S. Postal Service is available, agencies may then acquire real estate by purchase, lease, or construction, in accordance with FMR part 102–73.

**§ 102–83.110 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?**

Yes, if an agency has a specific location need to be in an urban area, then Executive Orders 12072 and 13006 require that agencies should give first consideration to locating in a historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area.

**§ 102–83.115 What is a central city?**

Central cities are those central cities defined by OMB in OMB Bulletin No. 99–04, or succeeding OMB Bulletin.

**§ 102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?**

If an agency has a need to be in a specific urban area that is not a central city in a metropolitan area, then the agency must give first consideration to locating in a historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of the appropriate metropolitan area.

## Preference to Historic Properties

**§ 102–83.125 Are Executive agencies required to give preference to historic properties when acquiring leased space?**

Yes, Federal agencies must give a price preference when acquiring space using either the lowest price technically acceptable or the best value tradeoff source selection process. See part 102–73 of this chapter for additional guidance.

## Application of Socioeconomic Considerations

**§ 102–83.130 When must agencies consider the impact of location decisions on low- and moderate-income employees?**

Federal agencies proposing locations for Federal construction or major lease actions involving the relocation of a major work force must consider the impact on employees with low and moderate incomes.

**§ 102–83.135 With whom must agencies consult in determining the availability of low- and moderate-income housing?**

Federal agencies must consult with the U.S. Department of Housing and Urban Development (HUD) in accordance with the Memorandum of Understanding (MOU) between HUD and GSA. The text of the HUD-GSA MOU is located in the Appendix to this part.

**APPENDIX TO PART 102–83—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE GENERAL SERVICES ADMINISTRATION CONCERNING LOW- AND MODERATE-INCOME HOUSING**

*Purpose.* The purpose of the memorandum of understanding is to provide an effective, systematic arrangement under which the Federal Government, acting through HUD and GSA, will fulfill its responsibilities under law, and as a major employer, in accordance with the concepts of good management, to assure for its employees the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, and to consider the need for development and redevelopment of areas and the development of new communities and the impact on improving social and economic conditions in the area, whenever Federal Government facilities locate or relocate at new sites, and to use its resources and authority to aid in the achievement of these objectives.

1. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601) states, in section 801, that ''It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' Section 808(a) places the authority and responsibility for administering the Act in the Secretary of Housing and Urban Development. Section 808(d) requires all Executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of title VIII (fair housing) and to cooperate with the Secretary to further such purposes. Section 808(e)(5) provides that the Secretary of HUD shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of title VIII.

2. Section 2 of the Housing Act of 1949 (42 U.S.C. 1441) declares the national policy of ''* * * the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family * * *.'' This goal was reaffirmed in the Housing and Urban Development Act of 1968 (sections 2 and 1601; 12 U.S.C. 1701t and 42 U.S.C. 1441a).

3. By virtue of the Public Buildings Act of 1959, as amended; the Federal Property and Administrative Services Act of 1949, as amended; and Reorganization Plan No. 18 of 1950, the Administrator of General Services is given certain authority and responsibility in connection with planning, developing, and constructing Government-owned public buildings for housing Federal agencies, and for acquiring leased space for Federal agency use.

4. Executive Order 11512, February 27, 1970, sets forth the policies by which the Administrator of General Services and the heads of Executive agencies will be guided in the acquisition of both federally owned and leased office buildings and space.

5. While Executive Order No. 11512 provides that material consideration will be given to the efficient performance of the

missions and programs of the Executive agencies and the nature and functions of the facilities involved, there are six other guidelines set forth, including:

• The need for development and redevelopment of areas and the development of new communities, and the impact a selection will have on improving social and economic conditions in the area; and

• The availability of adequate low- and moderate-income housing, adequate access from other areas of the urban center, and adequacy of parking.

6. General Services Administration (GSA) recognizes its responsibility, in all its determinations with respect to the construction of Federal buildings and the acquisition of leased space, to consider to the maximum possible extent the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, in accordance with its duty affirmatively to further the purposes of title VIII of the Civil Rights Act of 1968 and with the authorities referred to in paragraph 2 above, and the guidelines referred to in paragraph 5 above, and consistent with the authorities cited in paragraphs 3 and 4 above. In connection with the foregoing statement, it is recognized that all the guidelines must be considered in each case, with the ultimate decision to be made by the Administrator of General Services upon his determination that such decision will improve the management and administration of governmental activities and services, and will foster the programs and policies of the Federal Government.

7. In addition to its fair housing responsibilities, the responsibilities of HUD include assisting in the development of the Nation's housing supply through programs of mortgage insurance, home ownership and rental housing assistance, rent supplements, below market interest rates, and low-rent public housing. Additional HUD program responsibilities which relate or impinge upon housing and community development include comprehensive planning assistance, metropolitan area planning coordination, new communities, relocation, urban renewal, model cities, rehabilitation loans and grants, neighborhood facilities grants, water and sewer grants, open space, public facilities loans, Operation BREAKTHROUGH, code enforcement, workable programs, and others.

8. In view of its responsibilities described in paragraphs 1 and 7 above, HUD possesses the necessary expertise to investigate, determine, and report to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis and to make findings as to such availability with respect to proposed locations for a federally-constructed building or leased space which would be consistent with such reports. HUD also possesses the necessary expertise to advise GSA and other Federal agencies with respect to actions which would increase the availability of low- and moderate-income housing on a nondiscriminatory basis, once a site has been selected for a federally-constructed building or a lease executed for space, as well as to assist in increasing the availability of such housing through its own programs such as those described in paragraph 7 above.

9. HUD and GSA agree that:

(a) GSA will pursue the achievement of low- and moderate-income housing objectives and fair housing objectives, in accordance with its responsibilities recognized in paragraph 6 above, in all determinations, tentative and final, with respect to the location of both federally constructed buildings and leased buildings and space, and will make all reasonable efforts to make this policy known to all persons, organizations, agencies and others concerned with federally owned and leased buildings and space in a manner which will aid in achieving such objectives.

(b) In view of the importance to the achievement of the objectives of this memorandum of agreement of the initial selection of a city or delineation of a general area for location of public buildings or leased space, GSA will provide the earliest possible notice to HUD of information with respect to such decisions so that HUD can carry out its responsibilities under this memorandum of agreement as effectively as possible.

(c) *Government-owned Public Buildings Projects.* (1) In the planning for each new public buildings project under the Public Buildings Act of 1959, during the survey preliminary to the preparation and submission of a project development report, representatives of the regional office of GSA in which the project is proposed will consult with, and receive advice from, the regional office of HUD, and local planning and housing authorities concerning the present and planned availability of low- and moderate-income housing on a nondiscriminatory basis in the area where the project is to be located. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). A copy of the prospectus for each project which is authorized by the Committees on Public Works of the Congress in accordance with the requirements of section 7(a) of the Public Buildings Act of 1959, will be provided to HUD.

(2) When a site investigation for an authorized public buildings project is conducted by regional representatives of GSA to identify a site on which the public building will be constructed, a representative from the regional office of HUD will participate in the site investigation for the purposes of providing a report on the availability of low- and moderate-income housing on a nondiscriminatory basis in the area of the investigation. Such report will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a).

(d) Major lease actions having a significant socioeconomic impact on a community: At the time GSA and the agencies who will occupy the space have tentatively delineated the general area in which the leased space must be located in order that the agencies may effectively perform their missions and programs, the regional representative of HUD will be consulted by the regional representative of GSA who is responsible for the leasing action to obtain advice from HUD concerning the availability of low- and moderate-income housing on a nondiscriminatory basis to the delineated area. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). Copies of lease-construction prospectuses approved by the Committees on Public Works of the Congress in conformity with the provisions of the Independent Offices and Department of Housing and Urban Development appropriation acts, will be provided to HUD.

(e) GSA and HUD will each issue internal operating procedures to implement this memorandum of understanding within a reasonable time after its execution. These procedures shall recognize the right of HUD, in the event of a disagreement between HUD and GSA representatives at the area or regional level, to bring such disagreement to the attention of GSA officials at headquarters in sufficient time to assure full consideration of HUD's views, prior to the making of a determination by GSA.

(f) In the event a decision is made by GSA as to the location of a federally constructed building or leased space, and HUD has made findings, expressed in the advice given or a report made to GSA, that the availability to such location of low- and moderate-income housing on a nondiscriminatory basis is inadequate, the GSA shall provide the DHUD with a written explanation why the location was selected.

(g) Whenever the advice or report provided by HUD in accordance with paragraph 9(c)(1), 9(c)(2), or 9(d) with respect to an area or site indicates that the supply of low-and moderate-income housing on a nondiscriminatory basis is inadequate to meet the needs of the personnel of the agency involved, GSA and HUD will develop an affirmative action plan designed to insure that an adequate supply of such housing will be available before the building or space is to be occupied or within a period of 6 months thereafter. The plan should provide for commitments from the community involved to initiate and carry out all feasible efforts to obtain a sufficient quantity of low- and moderate-income housing available to the agency's personnel on a nondiscriminatory basis with adequate access to the location of the building or space. It should include commitments by the local officials having the authority to remove obstacles to the provision of such housing, when such obstacles exist, and to take effective steps to assure its provision. The plan should also set forth the steps proposed by the agency to develop and implement a counseling and referral service to seek out and assist its personnel to obtain such housing. As part of any plan during, as well as after its development, HUD agrees to give priority consideration to applications for assistance under its housing programs for the housing proposed to be provided in accordance with the plan.

10. This memorandum will be reviewed at the end of one year, and modified to incorporate any provision necessary to improve its effectiveness in light of actual experience.

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