

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 4300.1C

6-28-92

SUBJECT: REAL PROPERTY MANAGEMENT

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1. PURPOSE. To establish Departmentwide policies and procedures for the acquisition, use, inventory, and disposal of real property or interests therein.
 2. CANCELLATION. DOE 4300.1B, REAL PROPERTY MANAGEMENT (formerly REAL PROPERTY MANAGEMENT AND SITE DEVELOPMENT PLANNING, of 7-1-87); title changed by Change 1 of 2-7-91.
 3. SCOPE. The provisions of this Order apply to all Departmental Elements, except as otherwise provided by statute or by specific delegation of authority from the Secretary of Energy, and all contractors and subcontractors performing work for the Department whose contract may involve the acquisition, use, or disposal of real property or interests therein, and where the contractor will be reimbursed for the cost.
 4. REFERENCES. The following references are useful or necessary to perform the functions covered by this Order. There are additional historical references included in the text for general information or for research purposes.
 - a. DOE 4330.2C, IN-HOUSE ENERGY MANAGEMENT, of 3-23-88, which prescribes policies, procedures, and plans for energy management at all Department of Energy (DOE) sites.
 - b. DOE 4320.1B, SITE DEVELOPMENT PLANNING, of 1-7-91, which establishes procedures for planning development at DOE sites.
 - c. DOE 4330.4A, MAINTENANCE MANAGEMENT PROGRAM, of 10-17-90, which establishes policies, procedures, and plans for real property maintenance management at all DOE sites.
 - d. "Real Property Inventory System Reference Manual," with change material of 3-90, which provides instructions on the operation of the Automated Inventory System.
 - e. DOE LEASING HANDBOOK, OF 6-90, which provides a source of information and guidance for planning, acquiring, and managing leasehold workspace to meet DOE needs.
 5. APPLICABILITY.
 - a. This Order applies to acquisition, use, inventory, or disposal of all Departmental real property or interests therein.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Organization, Resources
and Facilities Management

- b. This Order does not apply to space obtained through the General Services Administration (GSA) within the National Capital Region.
- c. The Bonneville Power Administration (BPA) acquires and manages real property under authority derived from the Bonneville Project Act, the Federal Columbia River Transportation Act, and the Pacific Northwest Electric Power Planning and Conservation Act. The Administrator exercises these authorities independent of the provisions of this Order and consistent with prudent utility practices in a multi-utility system environment, and its ratepayer accountability. The Secretary of Energy, through this Order, establishes the general principles and policies for real property management, which policies serve as a guide for BPA in the execution of its real property program.

6. POLICY. It is the policy of the Department that:

- a. All real property holdings shall be planned, developed, and managed efficiently, economically and safely, and in compliance with all applicable rules and regulations governing real property;
- b. The acquisition, development, utilization, and disposal of facilities and land at all major DOE sites will be in accordance with an approved Site Development Plan. This development plan is meant to include the rehabilitation of, major modification of, or additions to existing facilities;
- c. Only real property essential to the mission of the Department shall be acquired;
- d. All real property holdings shall be utilized effectively; and
- e. All unneeded real property shall be disposed of promptly.

7. DEFINITIONS. Definitions are contained in Attachment 1.

8. RESPONSIBILITIES AND AUTHORITIES.

a. The Secretary or Designee.

- (1) Authorizes actions to acquire title to or interests in real property by condemnation.
- (2) Acting through the Director, Office of Organization, Resources and Facilities Management, or designee, establishes principles and policies relating to inventory, acquisition, use, and disposition of real property owned or controlled by the Department.

b. Director, Office of Organization, Resources and Facilities Management (AD-10).

- (1) Serves as the Department's official point of contact relating to inventory, acquisition, use, or disposal of real property.
- (2) Coordinates and establishes procedures to implement policies and principles relating to the inventory, acquisition, use, and disposition of real property owned or controlled by DOE.
- (3) Formulates and establishes criteria relating to the quantification of need for, and method of, acquisition of real property.
- (4) Cooperates with Headquarters Elements in the review and approval of studies submitted to Headquarters justifying the need for real property including land improvements.
- (5) As part of the overall budget process, makes recommendations to the Secretary regarding compliance with this Order for all real property actions.
- (6) Maintains an inventory of real property owned, leased, or controlled by DOE and for Departmental projects by its contractors.
- (7) Provides real property reports to the Office of Management and Budget (OMB), GSA, and other Federal agencies, as required.
- (8) Reviews, comments on, and implements, as appropriate, OMB issuances, Federal Property Management Regulations (FPMR), Executive orders, and legislation which affect the real property responsibilities of the Director, Office of Organization, Resources and Facilities Management.
- (9) Designates representatives to serve on various interagency committees and task forces pertaining to the real property and facilities management areas of responsibility of the Director, Office of Organization, Resources and Facilities Management.
- (10) Maintains liaison with OMB, the General Accounting Office, GSA, Department of Justice, and other Federal agencies concerning real property matters as they relate to the responsibilities of the Director, Office of Organization, Resources and Facilities Management.
- (11) Acting through the Chief, Real Property Branch (AD-141), reviews real property management programs of PSO or his/her designee not

less than once every 3 years to determine compliance with this Order.

- (12) Acting through the Chief, Real Property Branch (AD-141), issues certificates redelegating to program officials in Headquarters or to field elements the authority for real property transactions as specified in Chapter IX, "Delegations of Authority," of this Order.
- (13) When deemed appropriate, issues policy directives or memoranda necessary to clarify this Order and grants exception or modifications to the requirements of this Order.

c. Program Senior Officials (PSO) or Designees.

- (1) Review and recommend to the Chief, Real Property Branch, approval or disapproval of the documented studies justifying the need for acquisition of non-DOE-controlled real property.
- (2) Assure that documented studies and proposals to acquire real property and continuing plans for utilization of Government-owned or -controlled real property are made with full consideration of economy, efficiency, programmatic needs (both current and future), and all applicable laws and regulations.
- (3) Ensure that all reports and information disseminated are consistent with the information contained in the Real Property Inventory System 2 (RPIS2) maintained by the Director, Office of Organization, Resources and Facilities Management.
- (4) Administer procedures, as set forth by the Director, Office of Organization, Resources and Facilities Management, relating to real property activities under their cognizance.
- (5) Must approve all real property actions prior to authorization by or execution by a certified real property representative.
- (6) Implement authorized real property actions.
- (7) Review contractor practices relating to the acquisition and management of real property for conformity with this Order, including assurance that continuing plans for utilization of Department-owned, -controlled, or -leased real property are made with consideration of economy, efficiency, and programmatic need for the work to be done.

- (8) Assure that the policies and procedures for efficient and economical management of Government property, including the utilization and disposal of excess property, are applied to the management of real property.
- (9) Submit to the Chief, Real Property Branch, the reports required by this Order and other special reports as may be required.
- (10) Designate, in writing, the person responsible for accountability and management of real property under the cognizance of the respective PSO.
- (11) Ensure that the RPIS2 is maintained as a current data base by assuring that:
 - (a) All real property under their cognizance is reported in accordance with Chapter VII;
 - (b) Data are updated at least quarterly;
 - (c) All reports prepared by sites under their cognizance regarding real property reflect the information contained in the RPIS2;
 - (d) All users of the system within their organization and at sites under their cognizance are familiar with the system operating details and understand the current Real Property Users Guide; and
 - (e) Financial data in RPIS2 are consistent with that recorded in the Financial Information System (FIS).
- (12) Authorities in this subsection may be redelegated; however, such redelegation shall be in writing and shall specifically set out the accountability and management responsibility delegated to whom and for what period of time.

- d. Deputy Assistant Secretary for Naval Reactors has the same responsibilities as PSO's or designee for the Naval Reactors Program.
- e. Director of Procurement, Assistance and Program Management (PR-1), has the same responsibilities as PSO or designees for contractor actions administered by the Office of Procurement Operations.

- 9. SAVINGS PROVISIONS. All actions taken pursuant to any authority delegated prior to this Order and in effect on the effective date of this Order; all actions previously taken under the authority of DOE 4300.1B, REAL PROPERTY AND SITE DEVELOPMENT PLANNING, of 7-1-87, and DOE 4320.1B, SITE DEVELOPMENT

PLANNING, of 1-7-91, prior to the effective date of this Order as amended, are hereby confirmed and ratified and shall remain in full force and effect unless or until rescinded, amended, superseded, or terminated.

10. PROCEDURES.

- a. Detailed implementing procedures are contained in the appropriate chapters of this Order.
- b. Questions regarding this Order should be directed to the Chief, Real Property Branch, Office of Organization, Resources and Facilities Management (AD-141).

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

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DEFINITIONS

1. ABANDONMENT IN PLACE is the discontinued use of a facility without physical removal. Such abandonment must be documented to show conformance with 41 CFR 101-47.5, Abandonment, Destruction, or Donation to Public Bodies.
2. ACQUIRED LAND is land obtained from public or private sources, but excludes land withdrawn from public domain.
3. ANNEXATION is a proceeding, instituted by a municipality, to include Federal lands in its corporate limits.
4. AREA is a portion of a site. This term is applicable at larger sites that have been segmented into "areas" for facilities planning or other purposes as opposed to a "special area," which is offsite. Example: The "300 Area" at Argonne National Laboratory (ANL), which is a portion of the ANL site devoted to primary research and development.
5. BUILDING is an improvement that is suitable for housing people, materials, and/or equipment, or which provides only partial protection from the weather, such as a shed.
6. CANCELLATION CLAUSE is a lease clause permitting cancellation of a lease agreement by one or both parties to the lease when certain specified conditions are met.
7. CADASTRAL RECORDS are official records that show quantity, ownership, and value of real property or the rights thereto.
8. CONDEMNATION is a judicial proceeding, initiated by the Government under its right of eminent domain, to take private property for public use.
9. CONTRACTING OFFICER is a Departmental official who is authorized to execute and administer contracts under delegated contract authority.
10. DECLARATION OF TAKING is a pleading filed in a court with a condemnation proceeding, whereby, with the deposit of just compensation, the interest in the property, as stated in the pleading, is vested at once in the Government.
11. DEED is a written instrument, whereby, title to real estate is transferred. Deeds are usually under seal and must be recorded.
12. DISPOSAL is permanent or temporary transfer of DOE control and custody of real property to a third party who, thereby, acquires rights to control, use, or relinquish the property.

13. DONATION (GIFT) is the voluntary transfer or conveyance of an interest in property without payment or consideration of any kind.
14. EASEMENT is the right to use land belonging to another for a specific purpose, with the owner retaining title. The owner's use is restricted to activities that will not interfere with the purposes for which the easement was granted.
15. EMINENT DOMAIN is the right of the Government to take private property for public use.
16. ENCUMBRANCE is a claim against property, such as an easement or a mortgage, which prevents transfer of ownership free and clear of any claims; however, it may be transferred or sold to another, subject to the outstanding claim or claims.
17. EXCESS REAL PROPERTY is land, improvements to land, or both, including interest therein, which is not required for the Department's needs or the discharge of its responsibilities.
18. FACILITY is a general term used to describe any or all types of fixed site improvements, including buildings, structures, and utilities.
19. FAIR MARKET VALUE is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value.
20. FAIR RENTAL VALUE is the rental value under the proposed terms and conditions that the use of the real property commands in a competitive market.
21. FEDERAL LEGISLATIVE JURISDICTION is the power and authority of the Federal Government to legislate and exercise executive and judicial powers within defined areas.
22. FEE TITLE is full and unconditional ownership of surface, subsurface, and air rights. The words "fee" and "fee title" are used interchangeably.
23. FIELD ELEMENT is any officially established Departmental organization located outside the Washington, DC, Metropolitan Area.

24. FINAL JUDGMENT is the final order issued by the court in a legal action after all litigation is complete.
25. GENERAL PURPOSE SPACE is space in buildings and associated land under the assignment authority of GSA that GSA has found to be suitable for the interchangeable use of Federal agencies.
26. GRANTEE is the person to whom an interest in the real property interest is conveyed.
27. GRANTOR is the person conveying an interest in real property.
28. IMPROVEMENTS are buildings, structures, utility systems, transportation systems, and fixed equipment so attached to the building or structure as to become a part thereof, and which cannot be removed without damaging either the improvement or the property to which it is affixed.
29. JUST COMPENSATION is the monetary equivalent for the value of the property taken as determined by the court in condemnation proceedings.
30. LEASE is an agreement, which gives exclusive possessor interest in the property for a specified time, in exchange for payment of rent to the owner.
31. LICENSE is a privilege to use or pass over property for a specified purpose.
32. LIEN is a claim against the property to satisfy a debt.
33. METES AND BOUNDS is a description of the property in which boundaries are described by directions and distances from a point of beginning.
34. NOMINAL RENT is consideration in money or services of a token amount, usually \$1.00 per annum. It denotes a consideration unrelated to the fair rental value of the leased property.
35. OPTION is an agreement in which a property owner gives the Government the right to acquire an interest in his or her property at a specified price within a specified time.
36. OUTGRANT is a right to use DOE real property by means of a lease, easement, license, or permit.
37. PROGRAM SECRETARIAL OFFICER is a Senior outlay program official and includes the Assistant Secretaries for Conservation and Renewable Energy; Nuclear Energy; Fossil Energy; Defense Programs; Environmental Restoration and Waste Management, and the Directors of Energy Research, Civilian Radioactive Waste Management, and New Production Reactors.

38. PERMIT is a temporary right of exclusive or nonexclusive use of real property. It is generally applicable to granting another Federal agency the right to use DOE property, or vice versa.
39. PUBLIC DOMAIN LAND is land that the United States acquired from another nation by treaty, conquest, or purchase, ownership of which has never left the United States. These lands are administered by the Department of the Interior.
40. QUITCLAIM DEED is an instrument that transfers any title, interest or claim the grantor may have in property, without a warranty that such title, interest, or claim is valid. Also known as a deed without warranty. It does not guarantee clear title and is not acceptable to convey property on which the Government intends to make permanent improvements.
41. REAL PROPERTY OR REAL ESTATE, for purposes of this Order, are synonymous. Real estate means land and anything permanently affixed to the land such as buildings, fences, and those things attached to buildings such as light fixtures, plumbing and heating fixtures, or other such items, which would be personal property if not attached.
42. REAL PROPERTY REPRESENTATIVE, or realty specialist, is the person designated by the Head of the Field Element as the contact with the Chief, Real Property Branch, and who will answer for the appropriateness of real property actions in that organizational element.
43. RELATED PERSONAL PROPERTY is any personal property, which 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 whose removal would significantly diminish the economic value of the real property.
44. PERSONAL PROPERTY generally means movable items, which are not permanently affixed to or considered to be an integral part of the real property. Generally, but with exceptions, items remain personal property if they can be removed without serious injury either to the real property or to the items themselves.
45. RESTORATION is the act of restoring land and/or buildings to the condition in which it was received, less normal wear and tear.
46. RETROCESSION is the act of reverting back to a State the U.S. Government's legislative jurisdiction over property.
47. RIGHT OF ENTRY is the temporary right to enter upon property for a specified purpose without acquiring any real property or interest therein.

- 48. SCREENING is the process of circulating real property availability notices to determine if there is a requirement for use by another organization or agency.
- 49. STRUCTURE is any improvement that is not a building or a utility constructed on or in the land. Examples of structures include bridges, antenna towers, tanks, fixed cranes, roads, and sidewalks.
- 50. SURPLUS PROPERTY is excess property for which screening through other Federal agencies by GSA shows no Government requirement for the property.
- 51. TEMPORARY ACQUISITION OR TEMPORARY USE is the acquisition of less than an ownership title to real property for a definite period of time related to present and foreseeable Departmental requirements for real property in support of a particular program or project.
- 52. TITLE EVIDENCE is an analysis rendered by a title insurance company or other competent authority concerning the status of the legal title to a parcel of real property.
- 53. TITLE OPINION is, in the case of real property being acquired by the United States, the opinion of the Attorney General as to the efficacy of the Government's title to that property.
- 54. TOPOGRAPHIC MAP shows contour elevations at stated intervals along with natural features and geographic information.
- 55. UTILITY is a system, or any of its components, which generates and/or distributes (via pipelines, wires, buses, or electromagnetic waves) a commodity or service to itself and/or to other facilities.
- 56. WITHDRAWN LAND is public domain land that has been reserved by the Department of the Interior for use by a Federal agency for a specific purpose.

CHAPTER I

ACQUISITIONS

1. QUANTIFYING THE NEED.

- a. The acquisition of real property is governed by Public Law 91-646. Prior to 1989, the various executive agencies adopted their own rules that would be followed in applying Public Law 91-646 to their specific programs; however, beginning in 1989, a single rule was adopted by all agencies. That rule was codified in 49 CFR Part 24. Acquisitions by DOE must comply with that regulation.
- b. Within certain limitations that are discussed in this Chapter, Public Law 95-91 (91 Stat. 565) authorizes DOE to acquire real property. When new programs, expanding requirements of existing programs, administrative requirements, or other reasons result in a need for additional land and/or improvements, the appropriate program or management personnel should quantify the need. This requires justifying how much space is needed, for what period of time, and where and why it is required. Any decision must be based on a coordinated analytical effort by fiscal, legal, and technical personnel, as well as program and real property representatives. The real property representative must assure that input from all appropriate offices is solicited and considered.
- c. In quantifying the need, describe the minimum real estate interest needed to satisfy the project requirements in such a way that the reviewing levels will have a clear understanding of the nature of the requirement. Information, with backup documentation, on the following must be included:
 - (1) Proposed uses of the real property;
 - (2) Air, surface, and subsurface rights required;
 - (3) Estimated period of need;
 - (4) Amount of real property required, including, as appropriate, interim requirements based on the latest available GSA guidelines;
 - (5) Physical characteristics;
 - (6) Access and transportation requirements;
 - (7) Availability of funds;

- (8) Environmental impacts;
 - (9) Security considerations;
 - (10) Utilities requirements;
 - (11) Required proximity-to other Government or commercial facilities;
 - (12) Availability of skilled labor; and
 - (13) Demographic considerations based on proposed use (e. g., public safety and sensitivity of programs).
 - (14) Decommissioning and decontamination requirements at project completion.
- d. Construction on land already owned by the Government is covered in DOE 6430.1A, GENERAL DESIGN CRITERIA, of 4-6-89, and DOE 4700.1, PROJECT MANAGEMENT SYSTEM, 3-6-87.
- e. The real property aspects of construction projects shall be coordinated among budgeting, accounting, engineering, technical, legal, and real property staffs in the field elements for review and concurrence.
- f. If Government-owned lands and/or improvements are available that meet the minimum programmatic needs, they must be utilized. After determining that no property within DOE's jurisdiction is available, the acquiring office must contact the GSA regional office and local offices of other appropriate Federal agencies and request information on excess or under utilized Government-owned property. A determination should be made as to whether the requirement can be satisfied by available Government-owned property. Reasons for not using such property must be documented in the project file.
- g. General purpose office space to house Federal employees is outside the lease acquisition authority of DOE under Public Law 95-91. However, GSA has delegated authority to the Secretary to acquire general purpose space outside designated metropolitan areas. General purpose space within those metropolitan areas must be requested through GSA unless authorized by specific legislation. A more detailed discussion is included in Paragraph 7, "Leases."
- h. If the space can be provided within the authority of DOE and is temporary, such as to house people during a construction project, then relocatable personal property, such as a trailer, should be

considered. In order for relocatable structures to qualify as personal property, the following criteria must be met:

- (1) It must be designed to be readily and economically moved, erected, disassembled, stored, and reused.
 - (2) The completed structure must consist of no more than two single-story units, both of which are transportable on the public highways.
 - (3) The cost to disassemble and relocate the structure, including repackaging, repair, and refurbishment of components, must not exceed 20 percent of the structure's acquisition cost or current replacement cost, whichever is greater. Acquisition cost includes the cost of the building components, the cost of delivery to the site, and the cost of assembly. Acquisition cost does not include the cost of site improvements, such as paving, foundations, landscaping, and utilities, which are real property improvements that must be acquired as such, even if they serve relocatable structures.
 - (4) Design must provide economical, complete disassembly, and reassembly without substantial damage to the components.
 - (5) Where structures are connected (e.g., breezeways and walkways), each structure is considered a separate structure for purposes of paragraph 1h(2).
- i. Any unit that does not meet the criteria in paragraph 1h, but which the PSO or his/her designee believes should qualify as personal property, must be submitted to the Chief, Real Property Branch, and the Director of Property and Equipment Management, for their review and necessary approval, prior to classification as personal property.
 - j. When a determination is made that personal property will fill the need, a comparison must be made of the total cost of lease versus purchase to determine the method of acquisition, as is required by DEAR 907.4 and FPMR 101-25.5.

2. ACQUISITION PLANNING.

- a. The real property representative will ensure that a Preliminary Real Estate Plan (PREP) is prepared containing those items listed in paragraph 2e whenever there is a requirement to acquire additional realty interest by:
 - (1) Fee purchase;

- (2) Lease, if the term (including all options) is 5 years or greater; and the total rent, including the cost of initial alterations averaged over the term of the lease, exceeds \$500,000 per year;
 - (3) Any contract, which will result in construction of DOE-owned property improvements on non-DOE land, which will be funded as a line item construction project and where the estimated cost of the project will exceed \$5 million; and
 - (4) Transfer of excess Government-owned property from another agency to DOE, or withdrawal of land from the public domain.
- b. The PREP will serve as a decision document affecting all future site selection activity. As such, it must be reviewed by all affected personnel including program, budget, procurement, and real property. Certified real property representatives may exercise the real estate approval responsibility for PREPs, except for PREPs of real estate actions, which are part of Major System Acquisitions or Major Projects. In those cases, the PREP must be reviewed and approved by the Chief, Real Property Branch.
- c. The intent of the PREP is to assure general agreement on the proper alternative early in the planning cycle. For line item projects the PREP must be submitted at the same time as the Conceptual Design Report. At the option of the preparing office, the Plan may be a separate report or it may be included in the Conceptual Design Report. If a separate report is prepared, it may be submitted in advance of the Conceptual Design Report, if so desired.
- d. The PREPs that require Headquarters approval will be submitted to the Chief, Real Property Branch, who will obtain the necessary concurrences within Headquarters.
- e. The PREP must include the following information:
 - (1) A brief description of the program or project;
 - (2) An analysis of all viable options and alternatives considered, along with advantages and disadvantages of each; and
 - (3) A recommended option, for which the following information must be provided:
 - (a) Site and/or building size and probable site boundaries (copy of plat, if available);
 - (b) Preferred area of consideration, with an area map; and

(c) Cost estimate for the recommended alternative.

(4) If a leasing action or fee acquisition requires a particular or unique property, then pertinent information for that site only will be required.

3. PURCHASE OF PROPERTY.

a. Site Selection. Once it is determined that purchase of private land is the preferred option, specific appropriated funds to acquire private land must be obtained. Planning should continue while awaiting funding authority.

b. It is recognized that in some cases a site for a new facility may be so closely associated with an existing site or facility, that only one site can reasonably be considered. In such cases, a sole source justification fully supporting that conclusion must be prepared.

c. Where multiple sites will be considered, a site investigation team should be formed to search for appropriate sites.

d. It should be noted that legislative authority, sufficient appropriated funds, and appropriate authorization (see Chapter IX, Delegation of Authority) are required before program personnel or a contracting officer may commit the Government to a real property action. Title to all real property purchased by DOE or by the contractor for DOE on a fully reimbursable basis must vest in the Government at the time of acquisition unless other action is authorized by specific legislation.

e. The DOE site investigation teams should have three to five members drawn from the local field element, the PSO for the requesting program, and other Headquarters Elements, as appropriate. The real estate representative from the acquiring office must be a member of this team. The function of the team is fact finding and advisory only. Preparing its recommendations, which will not be made public, the team will take the following actions:

(1) Comply With Executive Order 12372. "Intergovernmental Review of Federal Programs," by determining its applicability to the specific real property action. Guidance on applicability and implementing instructions are contained in 10 CFR 1005.

(2) Arrange for Public Notice.

(a) When a requirement for acquisition of non-Government-owned real property is known, and multiple sites will be considered, it should be advertised to the public.

Notice of this intent to select and acquire a site should be given by paid advertising in local newspapers. A copy of the notice should be sent to any property owners known to be interested. The advertisement shall contain the following information:

- 1 Desired boundaries;
 - 2 Amount and type of space needed;
 - 3 Unique characteristics or requirements, if any;
 - 4 Date space is required;
 - 5 Planned schedule for acquisition and displacement of property occupants, if any; and
 - 6 Source where further information may be obtained.
- (b) Competition must be solicited in all acquisitions except in those cases where sole source can be justified. In those cases, the file must be thoroughly documented and any required approval obtained before proceeding.
- (3) Contact Owners of any additional sites not offered in response to the advertisement that are considered suitable to meet DOE needs to determine their willingness to sell.
 - (4) Inspect Sites in the area, which are offered for sale and appear to meet DOE requirements. Payment may be required to gain entry (for testing or other information) in certain cases; such payment is authorized. Owners of the property will be given the chance to accompany the team during its onsite investigation.
 - (5) Collect and Evaluate Information required to complete an evaluation of the alternative sites. The level of detail for backup data for preliminary site evaluation is a matter of judgment. However, the file must contain full and complete data that document the reasons for recommending a particular site. It should also identify potential real property acquisition problems that can take a long time to resolve. These problems should be identified as early as possible so that corrective action can be taken. Special assistance can be requested from the Chief, Real Property Branch, to seek solutions to acquisition problems.

- (6) Select the Site. The site evaluation report should be forwarded to the official making the selection. This official will be named by the appropriate PSO or designee and must not be a member of the site selection team.
- f. Documentation. The data described below will be collected or developed for all sites and evaluated in making the recommendation for a specific site:
- (1) Description of Real Property or Real Property Interests. including a general description of each parcel of real property being considered, total acreage, availability for purchase, and possible method of acquisition.
 - (2) Environmental Requirements. including compliance with the National Environmental Policy Act (NEPA) (Public Law 91-190), the National Historic Preservation Act (Public Law 89-665), the Endangered Species Act (PL 99-625), the Resource Conservation and Recovery Act (Public Law 94-580), Floodplain Management (Executive Order 11988), and Protection of Wetlands (Executive Order 11900), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S. Code 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act (Public Law 99-499), and other applicable requirements identified in (d) below. These should ordinarily be completed prior to the submission of any real property action for review and/or approval. Information on DOE's responsibilities under these requirements can be obtained from:
 - (a) DOE Guidelines for Compliance with NEPA of 12-15-87 (52 FR 47662), as amended 3-27-89 (54 FR 12474) and 9-7-90 (55 FR 37174);
 - (b) DOE National Environmental Policy Act implementing procedures (DOE NEPA Regulations), 10 CFR 1021, which establish Departmental procedures for implementing the procedural provisions of NEPA pursuant to the Council on Environmental Quality regulations. These regulations were published on 4-24-92 (57 FR 15122);
 - (c) DOE 5440.1D, NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM of 2-22-91;
 - (d) DOE 5400.1, GENERAL ENVIRONMENTAL PROTECTION PROGRAM, of 11-9-88;

- (e) DOE 5400.4, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT REQUIREMENTS, OF 10-6-89;
 - (f) DOE Regulations for Compliance With Floodplain/Wetlands Environmental Review Requirements (10 CFR 1022);
 - (g) The AD NEPA Compliance Officer, designated under DOE 5440.1D, whose responsibilities include assisting in the planning and execution of AD's NEPA compliance activities;
 - (h) The Office of NEPA Oversight (EH-25) for assistance in compliance with NEPA; and
 - (i) The Office of Environmental Compliance (EH-22) for assistance in compliance with related environmental requirements.
- (3) Toxic and Hazardous Substance Requirements in real property acquisitions are serious items which must be addressed prior to any commitments being made to acquire land and/or improvements.
- (a) The management of hazardous substances is addressed under numerous Federal statutes, with a comprehensive definition covering all statutes provided under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A complete list of CERCLA hazardous substances can be found in 40 CFR 302.4.
 - (b) State and local regulations may also address management of hazardous substances, or control the sale of property containing or potentially containing toxic/hazardous waste.
 - (c) Properties being considered for acquisition shall be thoroughly investigated including onsite investigations of land and buildings, review of previous occupancies and records of local, state, and Federal regulatory agencies, review of possible contamination from adjoining properties and whatever other steps are appropriate to assure that no contamination exists. Personnel qualified in hazardous site investigations should be used to assure that all potential contamination is considered.

- (d) The identification and assessment of such contaminants as:
- 1 Friable asbestos
 - 2 Equipment containing Polychlorinated Biphenyls
 - 3 Underground storage tanks
 - 4 Radioactive materials (including Radon)
 - 5 Urea formaldehyde insulation
 - 6 Pesticides
- (e) If a site will be considered on which contamination exists, special care must be exercised, particularly for sites listed or having potential to be listed on the CERCLA National Priorities List. Having the seller conduct the site cleanup, in accordance with State and Federal environmental requirements prior to purchase, is the preferred solution. The following additional actions should be taken prior to purchase:
- 1 Assure that the acquisition agreement contains adequate language to protect DOE from liability;
 - 2 Determine costs of site cleanup (if DOE will be responsible);
 - 3 Determine the length of time required for cleanup; and
 - 4 Coordinate with the State and Federal environmental authorities.
 - 5 Consult with the Deputy Assistant Secretary for Environment (EH-20) and the Deputy General Counsel for Environment, Conservation, and Legislation (GC-10).
- The followup required includes tasking qualified personnel to monitor the cleanup, to assure compliance and obtain the environmental agencies approval of the work accomplished.
- (f) Considerations of safety, health, and comfort shall be included, taking into account applicable regulations and standards such as those issued by the Occupational Safety and Health Administration, National Fire Protection Association, American Association of Heating, Air-Conditioning and Refrigeration Engineers, and other organizations as applicable.

- (4) Seismic Standards. The degree of compliance with Executive order 12699, dated January 4, 1990, will be described, to ensure compliance with appropriate seismic design and construction standards.
- (5) Parcel Descriptions. including perimeter descriptions for use in acquisition by purchase or condemnation. A perimeter or tabular description of the total area will be based on acceptable survey data. Parcel descriptions from the available public records will be furnished for each separate ownership.
- (6) List of Owners of all parcels, including the owners of easements and other rights, and their addresses.
- (7) Estate(s) to be Acquired shall be shown for each parcel of land. Certain interests, such as mineral rights, water rights, and timber rights may be separated from the remaining interests in real property. When this separation occurs, a determination must be made whether acquisition of the separate interest is required. If it is not required, it will be excluded from the estate to be acquired. Whenever real property or capital improvements are to be constructed on the land, fee title must be acquired, unless Congress authorizes another estate.
- (8) Current Use. including present residential, industrial, commercial, or agricultural uses, described in enough detail so that reviewers will have a full understanding of the present utilization of all parcels.
- (9) Subsurface Rights.
 - (a) This should include information on any underground water rights and on mining, oil, or gas activities within the parcels proposed for acquisition, as well as in the general area. This documentation should:
 - 1 Identify minerals being removed, subsidence, the period during which the mining operations have taken place, possibility of termination of such operations, and whether surface or subsurface mining operations are conducted.
 - 2 Provide an evaluation of the possibility of minerals being developed, and if such development would interfere with proposed DOE operations.

- 3 Identify mineral interests under separate ownership and include the names and addresses of the owners.
- (b) Information on mineral characteristics of lands and mineral production may be obtained from the local offices of the U.S. Geological Survey or the Bureau of Mines. Comments and recommendations on the acquisition of mineral interests or their exclusion will be made. Recommendations will also be made on terms and conditions under which the mineral rights may be exercised if they are to be excluded, considering security problems, likely exploration, and their effect on DOE use of the land.
- (10) Estimated Acquisition Costs for each alternative being considered should be obtained by the real property representative. The estimate should include both the costs of acquiring the needed property and fees associated with procuring information necessary to complete the transaction. Specific items to be considered in preparing an acquisition cost estimate include:
- (a) Property-owner entitlements, which include property value, loss in value to remaining lands, and relocation benefits. Relocation benefits address relocation housing payments, rent supplements, moving costs, interest differential, and transfer costs.
- (b) Acquisition services, including title information, appraisal fees, legal closing costs, and possible condemnation expenses.
- (c) If leasing is being considered, a preliminary market survey should be prepared to determine rental prices per square foot of similar buildings in the area and a description of lease terms currently being offered in the market.
- (d) This information should be developed only to the extent necessary to aid selection of an alternative.
- (11) Submerged Areas. Determine ownership of any submerged area adjacent to high lands being considered, because ownership of high lands does not always allow the right to construct, to fill, or to deposit spoil in the abutting submerged areas.

- (12) Taxes. Name and address of the taxing authority, amount of the taxes paid during the preceding tax years, current assessed value of the property to be acquired, and current tax rate.
- (13) Easements. Copies of, or information on, all existing easements, licenses, leases, or other rights of third parties, and a recommendation on extinguishment or acquisition subject to each interest.
- (14) Vicinity Map showing the location of the real property to be acquired and its proximity to major highways, railroads, rivers, airfields, and metropolitan areas. Any significant features in its immediate and general vicinity, which might affect its acquisition or its proposed use should be noted.
- (15) Property Map showing:
 - (a) Exterior and parcel boundaries of the real property to be acquired;
 - (b) General location of major improvements and structures;
 - (c) Siting of proposed DOE construction;
 - (d) Location of existing rights-of-way for roads, highways, railways, utilities, and for other purposes;
 - (e) Proposed route of relocation of any of the existing rights-of-way;
 - (f) Approximate location and direction of flow of natural water courses; and
 - (g) Other pertinent information that may affect acquisition or use of the real property.
- (16) Relocation Assistance. Provide an estimate of the funds needed to cover payments and services given to persons who will be displaced as a result of the acquisition. Such assistance must be provided according to Public Law 91-646 (84 Stat. 1894), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, so that disproportionate economic losses are not suffered by the former occupant(s) as a result of the move. Relocation assistance includes providing funds for moving and related expenses, costs incurred in searching for another location, and actual direct losses experienced as a result of the move.

In addition to monetary aid, Public Law 91-646 (84 Stat. 1894) also requires that advisory services be provided to displaced persons.

- g. Acquisition Assistance From Other Agencies. In areas where DOE real property expertise is not available, the services of another Government agency, such as GSA or the Corps of Engineers (USACE), may be requested. If services from another agency are not available, they may be contracted for. Requests for services from USACE must come to the Chief, Real Property Branch, if the local USACE office must obtain approval of the work from its Headquarters. Prior Headquarters approval or coordination is not required for informal contacts with other agencies, for assistance from GSA and other Federal agencies for actions otherwise within the authority of the field elements, or for assistance from USACE that does not require the USACE Headquarters approval.
- h. Decision. When the site evaluation report is completed and the recommendation prepared, the entire package is presented to the site selection official, who is named by the appropriate PSO or designee and who must not be a member of the site selection team, who then makes the decision (see page I-7, paragraph 3e(6)).
- i. Acquiring Title. After a recommended site is selected for acquisition by purchase, the acquiring office will proceed as follows:
 - (1) Ownership Data for all property being acquired will be verified and complete legal description for each parcel will be obtained, if not already assembled, in the site evaluation phase. Property boundaries must be identified before contracts are entered into for appraisal, title evidence, and survey. The identity of the property owner and the legal description may be obtained from the local registry of deeds, a title insurance company, land court, or tax assessor. If a plat plan is not available in the legal description, the city clerk or the tax assessor may be able to furnish one. Should the area to be acquired consist of less than the total area owned, a description of the area to be acquired must be prepared based on and reconciled to the description of the land as contained in the deed of record.
 - (2) Title Services. The need for the services of a title company begins early in the fee acquisition process and continues through to completion of the action.
 - (a) Requests for Title Services should be made to those companies that are acceptable to the Department Of

Justice. These usually include the major title companies. The local U.S. Attorney may assist by identifying such companies. Another source is "The Directory of the American Land Title Association," published by the Association at 1828 L Street, NW., Washington, DC 22036. Procurement of title evidence should be done by contract.

- (b) Preliminary Title Report should be obtained at the earliest practical date and furnished to the appraiser for information and use. This report must be prepared in accordance with Department of Justice standards. It should also be used by the negotiator in negotiations.
- (c) Title Evidence. One of the following types of title evidence will be obtained by the field element or contractor:
 - 1 Title Insurance Policy. A contract ensuring interests acquired in property against all defects in title; or
 - 2 Certificate of Title. A contract in which a title company certifies that title to a specific parcel of land is good and unencumbered except for the defects and encumbrances shown. This form of title evidence is acceptable only when a title insurance policy cannot be obtained.
- (3) Appraisals are required for all acquisitions of interests in real property. Detailed information on appraisal requirements, choosing an appraiser, and obtaining an appraisal is given in Chapter III, "Appraisals."
- (4) Topographical and Boundary Survey is made to identify individual parcels and land rights needed for the project and, if necessary, to give the metes and bounds description. A right of entry for survey and exploration must be obtained if the surveyor is going to enter the land. The survey will be accomplished so that the legal description contained in the title evidence can be checked and verified. A notification should be sent to the property owners that the survey will be made.
- (5) Making Offer to Owner. The owner of real property to be acquired shall be furnished with a written statement of, and summary of the basis for, the amount established by DOE as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining

real property shall be separately stated. An Offer to Sell should accompany the Statement of Just Compensation.

- (6) Negotiations are initiated with the property owner after authority to acquire has been received. Prior to starting negotiations with the property owner, the negotiator should review the appraisal, title evidence, and preliminary title opinion; become completely familiar with the Government project and the property to be acquired; and be aware of what curative title work may be needed. The negotiator should also be fully knowledgeable of any information which might have an effect on the property value, especially the presence of tenants with or without lease. Negotiations should be conducted in a businesslike and courteous manner. The negotiator must not resort to coercion or threats of condemnation and should fully explain the owner's right to relocation assistance if such is necessary. The negotiator should begin the negotiations by offering, in writing, the amount established by the DOE as just compensation. If after negotiations an agreement cannot be reached on an acceptable price, condemnation action may be required. Acquisition by condemnation is described in Chapter IV, "Condemnation."
- (7) Required Elements for Negotiation are as follows:
 - (a) Negotiator's Report. A written report of negotiations on each parcel must be prepared by the negotiator. The report should be a chronological history of the negotiations, factors considered in evaluating the owner's offer, and justification for acceptance or rejection of offer.
 - (b) Time Limits. Negotiations should be completed as quickly as possible. As a general rule, three personal negotiation sessions should produce an agreement to sell or make it apparent that further efforts to negotiate will serve no useful purpose.
- (8) Acquisition from Members of Congress or DOE Employees. When a member of Congress or an employee of DOE or its agent has a direct interest in real property being acquired by DOE, the tract must be acquired by condemnation.
- (9) Options. Only options with no cost to DOE will be sought. Contractors may not purchase options if the cost is to be ultimately paid by DOE under the contract.

- (10) Reservations in Contract to Sell. Reservations or exceptions of crops, timber, or improvements, with the right to these for a specified period of time, will be permitted if determined to be in the best interest of the Government. The reservation shall indicate that, should the reserved crops, timber, or improvements not be removed within the period of the reservation or any extension thereof granted by the Government, title to such crops, timber, or improvements shall vest in the Government.
- (11) Subsurface Rights. In most acquisitions, it is necessary to obtain all subsurface rights to minerals, coal, oil, or gas. Under circumstances where these rights need not be extinguished, provisions should be made in the offer and the deed to subordinate such rights to protect DOE use. This may be done by restricting these rights so that there will be no interference with DOE operations on the property, and so that they will not preclude later sale or other disposition of the U.S. Government or DOE interest.
- (12) Interim Occupancy. Under certain circumstances, depending on when DOE needs the property, the owner(s) or tenant(s) may be permitted to continue to occupy the property for a limited time under a rental agreement. This should be determined during negotiations and made a part of the formal settlement package.
- (13) Deed. The deed will be prepared in accordance with the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States," issued by the Department of Justice. These can be obtained from the Chief, Real Property Branch, or from the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. Once the deed is executed, it must be recorded in the local jurisdiction or municipal offices so that the Government can protect its title to the property.
- (14) Preliminary Title Opinion. After an acceptable title document has been received, it will be forwarded to the Land and Natural Resources Division, Department of Justice, for examinations and preliminary title opinion, as required under section 355, Revised Statutes (40 U.S.C. 255, 33 U.S.C. 733, and 50 U.S.C. 175), as amended by Public Law 91-393, approved 9-1-70 (84 Statute 835). A copy of the offer to sell from the owner, if any, and a draft of the deed should accompany the title evidence as part of the submittal to the Department of Justice. No real property may be purchased or a permanent easement acquired until the Department of Justice has approved the title.

- (15) Closing of fee acquisitions may be made by the contract firm that prepared the title evidence if in-house capability is not available. To the extent not otherwise obtainable through use of title company escrow arrangements, proper closing action when acquiring title in real property is the responsibility of the closing attorney. If the expertise is not available from the title company under contract or USACE, assistance should be requested from the Chief, Real Property Branch. When the closing attorney is satisfied that all objections to the title are eliminated, the purchase price will be paid to the property owner, and DOE will simultaneously take possession of the property. All instruments releasing liens or encumbrances will be recorded with the clerk of the court or registrar of conveyances prior to the deed being recorded.
- (16) Preoccupancy Inspection. At the time of closing, that is, the date that title passes to the United States, a DOE employee must inspect the acquired property and prepare a "Certificate of Inspection and Possession." A sample format may be found in "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies," Land and Natural Resources Division, Department of Justice, 1972.
- (17) Final Title Opinion. A final title assembly shall be submitted to the Attorney General as soon after closing as possible. Information submitted with the request for preliminary and final title opinions shall meet the requirement of "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies."
- (18) Recorded Disposition. The Attorney General's opinion on the title and related documents, along-with a copy of the deed, will be made a part of the official property file at the acquiring office. If persons or businesses are to be relocated, the field organization should submit a report on the relocation program to the Chief, Real Property Branch.
- j. Condemnation. If the Government is unable to acquire the needed property at a just and reasonable price through negotiation, as a last resort, DOE may request the Department of Justice to condemn the property. This is discussed in Chapter IV, "Condemnation."
- k. Federal Legislative Jurisdiction. The DOE rarely seeks to obtain legislative jurisdiction over real property which it acquires. Decisions relating to DOE's obtaining or relinquishing Federal legislative jurisdiction are the responsibility of the PSO or designee in coordination with the local real estate representative and counsel.

4. TRANSFER FROM ANOTHER GOVERNMENT AGENCY.

- a. Authority. Section 202a of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), authorizes GSA to provide for transfer of excess real estate among Federal agencies. These transfers will be made according to the Federal Property Management Regulations (FPMRs).
- b. Notice of Availability. GSA regularly issues notices of availability of excess property (known as screening).
- c. Reimbursement. Current policy requires that an agency budget for the property and pay the appraised fair market value to GSA before accountability is transferred to the requesting agency.
- d. Documentation. A request for excess Federal property should be supported by:
 - (1) Complete information on the intended use of the property and the justification for the transfer;
 - (2) Identity and location of the property with adequate descriptions thereof, including copies of real estate maps of the land areas and a vicinity map showing location of the property in relation to the installation requesting it; and
 - (3) GSA Form 1334, "Request for Transfer of Excess Real Property and Related Personal Property," fully completed for transmittal to GSA. These forms can be obtained from the nearest GSA store.

5. WITHDRAWAL OF PUBLIC DOMAIN LANDS.

- a. Authority and Policy. The authority vested in the President to withdraw and reserve public domain lands has been delegated to the Secretary of the Interior. In accordance with Public Law 95-91 (91 Stat. 565, 42 U.S.C. 7101), DOE may request the Department of the Interior to withdraw public domain land for DOE use. Only the minimum area required is to be withdrawn and reserved for DOE use.
- b. Procedures for withdrawal of public lands are as follows:
 - (1) The requirement for public lands is developed by the real property representative in coordination with the program office.

- (2) An application for withdrawal of public land, following the requirements in 43 CFR 2310, is submitted by the field element to the appropriate Bureau of Land Management (BLM) office. The application will contain a complete justification for the withdrawal and will include information regarding:
 - (a) Number of acres and location of the area involved, including a detailed description of exterior boundaries and a map outlining the boundaries of the area to be withdrawn;
 - (b) Whether the use will result in contamination of the area, and if so, an indication of the type of contamination, the areas involved, and whether periodic decontamination action is required;
 - (c) Length of time the area is required; and
 - (d) Use of water resources and whether the right to use conforms to State laws and procedures.
- (3) Before a withdrawal aggregating 5,000 acres or more can be finalized, the Secretary of the Interior must notify both Houses of Congress. Congress then has a minimum 90 days to take no action or adopt a concurrent resolution stating that it does not approve the withdrawal. (See Public Law 94-579 (90 Stat. 2743), Federal Land Policy and Management Act of 1976.)
- (4) If prompt use of the land is needed, the application for withdrawal will include a request to the BLM office to expedite action.
- (5) The field element will be responsible for presenting the DOE position in any hearings held by the State director of the BLM on a proposed withdrawal. Usually there will be no local hearings on withdrawals that require legislation since hearings before Congress are considered to be public hearings.
- (6) When approved by the Department of the Interior, a public land order will be issued by that Department, withdrawing and reserving the land for DOE use. This will be published in the Federal Register. A copy of the land order and/or items in the Federal Register will be made a part of the real property file at the field element.

- (7) Under Public Law 94-579 (90 Stat. 2743), Federal Land Policy and Management Act of 1976, new withdrawals can be for a maximum of 20 years, at which time the withdrawal must be rejustified and reapproved by the Department of the Interior. If a withdrawal is needed for more than 20 years, congressional approval of the longer term is required. Requirements for such justification have been furnished to field elements. Additional information may be obtained from the local office of the BLM.
- (8) Withdrawals in effect as of 10-21-76, and not exempt, must be rejustified and reapproved as required under section 204e of Public Law 94-579 (90 Stat. 2743). Schedules for review have been furnished by BLM. The respective field element should contact the local BLM office at least 6 months prior to a scheduled review to discuss the content of the required report, including any environmental assessments or mineral surveys.

6. EXCHANGES AND DONATIONS.

- a. On rare occasions, real property is acquired by DOE through exchange or donation. The acquisition procedures are the same as for fee purchase.
- b. For exchanges, programmatic justification is required. The properties to be exchanged must be of approximately like values. An agreement will be prepared that describes both the offered property and the Government-owned property that are to be conveyed and the monetary consideration to be paid by either party. Appraisals must be obtained on all properties involved. Title evidence, clearance and closing are required. The party conveying property to the Government must be reimbursed for the full value established in the approved appraisal unless a written waiver of just compensation is furnished and included in the acquisition file.
- c. For donations, which must be accepted by the Secretary of Energy or designee, an agreement will be entered into setting forth the terms and conditions of the donation and conveyance to the United States. An appraisal is required, and title clearance and closing are processed in the same manner as a fee acquisition.
- d. The requirements under paragraphs 3f(2) and (3) of this chapter shall be addressed, as appropriate.

7. LEASES. When quantification of the program real property requirements results in a decision that less than fee interest will best serve the needs of the Government, then the alternative of leasing space should be explored.
- a. Types of Leases. A lease conveys the right to use property belonging to another for a period of time in return for payment of rent under terms set out in the lease agreement. Some of the conditions of the lease are dictated by who signs the document. All leased space must be acquired, designed, and occupied in a manner which meets all legal and regulatory requirements. Those requirements are detailed in the United States Department of Energy Leasing Handbook dated June 1990. The most common leases for DOE are signed by:
- (1) DOE under Public Law 95-91 (91 Stat. 565), the DOE Organization Act;
 - (2) A DOE contractor as authorized under the contract with DOE;
 - (3) A DOE contractor under its own corporate authority;
 - (4) GSA for space assigned for use by DOE; and
 - (5) DOE under a delegation of authority from GSA.
- b. Leases Signed by DOE Under Public Law 95-91 (91 Stat. 565).
- (1) Public Law 95-91 (92 Stat. 565) authorizes DOE to acquire by lease, real property other than general purpose office space necessary to accomplish its mission. Leases may be used to acquire needed special purpose facilities and land.
 - (2) DOE may lease special purpose space for more than a year provided that no-year funds are either obligated for the entire amount of the firm term rent or the amount of the cancellation payment, if one is provided, plus rent to the date on which cancellation may be exercised. DOE 2200.5A, FUND ACCOUNTING, of 12-31-91, accounts for obligations for additional guidance regarding obligations criteria.
 - (3) GSA has delegated to DOE authority, which augments Public Law 95-91 (91 Stat. 565), and, which is further discussed in Paragraph 7j.

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- c. Leases Signed by Contractors-General. When real property is leased by a contractor to perform work for DOE, and the cost of the lease rent is reimbursed under the DOE contract, acquisition of the leasehold interest (a "covered" contractor lease) will follow the procedures in this Order. There are two procedures for covered contractor leases, depending on whether or not the contractor has an approved leasing system. To obtain approval of its leasing system, the contractor must have approval of the DOE programmatic approving official (Operations Office Manager for the eight operations offices, or PSO or designee for other field offices), and by a Certified Realty Specialist (CRS). An approved leasing system must include the following elements:
- (1) Leases must be within dollar and square footage authorizations prescribed by DOE;
 - (2) The contractor shall develop and use a standard lease package, including terms and conditions approved by DOE;
 - (3) The lease requirement must be competed or the contractor's sole source justification must be approved by DOE and included in the contractor's lease file;
 - (4) Reasonableness of price must be demonstrated (via appraisal, broker data, etc.);
 - (5) The contractor must maintain real property lease files that reflect the process used to acquire the leased property and that provide a good audit trail;
 - (6) The contractor shall utilize personnel who have been appropriately trained for real property lease acquisition actions; and
 - (7) The contractor shall plan lease actions for continuing requirements so holdovers do not occur.
- d. Contractor Leasing Procedure. Contractors with Approved Leasing Systems. Once the CRS has approved a contractor's leasing system, the CRS may approve square footages and allowances as described in this paragraph so long as the total estimated annual rent based on the allowance and estimated square footage does not exceed \$500,000 per annum. Where the projected annual rent would exceed \$500,000, the proposal, together with a CRS recommendation, must be submitted to the Real Estate Team for Headquarters review and approval. In either case, the procedures of this paragraph will apply to the leasing action.

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- (1) The contractor may lease general purpose office space to house contractor personnel. The contractor may not lease general purpose office space to house DOE or other Government personnel.
- (2) No prospectus is required for contractor leases.
- (3) Indemnity and/or hold harmless clauses are discouraged. When market conditions dictate, such clauses may be used with prior consent of DOE.
- (4) All contractor lease agreements must be consistent with the Chief Financial Officer's guidance on scoring of budget authority for that agreement. The budget authority must be scored in the first year of the contract for the entire firm term of the lease. However, if there are cancellation rights, then the budget authority must be scored for the rental until cancellation rights can be exercised, plus any cancellation penalties.
- (5) Reimbursable contractor leases shall contain certain clauses, terms, and conditions as approved by the cognizant DOE contracting officer and CRS consistent with guidance provided by the Real Estate Team.
- (6) In acquisition of space, contractor leases are governed by the same standards as those for Federal employees in the following areas:
 - (a) The amount of square footage;
 - (b) Justification for above standard alterations; and
 - (c) Use of the proper appropriated funds.
- (7) The space requirements must be reviewed and approved by the CRS in the appropriate DOE office. The space requirements must be well planned and adequately described to enable the CRS to classify the space in accordance with the space types used by GSA in their budgeting rental matrices.
- (8) The requirements must be furnished to the CRS in adequate time to allow for all necessary DOE reviews plus sufficient time for the contractor to negotiate a lease meeting the requirements of this Chapter. If the contractor does not negotiate a lease within the approved DOE thresholds for square footage and/or rental rate as discussed below in paragraph 7d(10)(c), sufficient time must be allowed for DOE review and approval of the entire lease package prior to the contractor entering into any lease agreement.

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- (9) For the CRS to develop a predetermined rental allowance for fully serviced, turnkey space (Allowance), the contractor must provide anticipated terms and conditions that will effect the Allowance for the lease. This will include, but not be limited to, lease term and firm term, escalators if any, buildout, renewal rights, and cancellation rights.
- (10) The CRS will review and approve the square footage of space, which may not be exceeded, and develop the Allowance. The Allowance is to be developed as a composite annual square foot rate (weighted average) for the total of all types of space involved. The Allowance shall be developed in accordance with paragraphs 7d(10)(a), (b) and (c).
 - (a) Initially use the GSA rental matrices for the Budget Year of the budgeting cycle, which is generally provided by GSA approximately 18 months before the Budget Year.
 - (b) Confirm or adjust the GSA data by one or more of the following methods:
 - 1 Contact the appropriate GSA regional office and determine the accuracy of the matrix data;
 - 2 Conduct a market survey;
 - 3 Have an appraiser conduct a market survey or prepare an appraisal establishing a range of rental values;
 - 4 Subscribe to real estate information services for commercial office rental properties provided by local and national real estate organizations; and
 - 5 Any other reliable source of rental data not listed above.
 - (c) The GSA rental rates are for fully serviced, turnkey leases and may require adjustments for special space requirements over and above commercial standards. Any such special space requirements will require the preparation of independent cost estimates. The estimated cost of such requirements will be amortized over the initial term of the lease. If there are cancellation rights during the initial term of the lease, a cancellation penalty clause may be included. The cost of the special space requirements, amortized over the initial term and estimated square footage of space to be leased, is added to the initial annual square foot rate developed in paragraph 7d(10)(b) to adjust the Allowance.

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- (11) The method of measuring space must be the same in identifying the square footage requirements and the development of the annual square foot rent.
- (12) The CRS must thoroughly document the files clearly showing how the Allowance was established.
- (13) Developing the Allowance for exercising a contractor priced renewal option shall follow the same procedures as for the initial lease term. The contractor will need to justify the continuing need for the space. Then the CRS will develop rental data for the subject market to determine the reasonableness of the annual square foot rate for the renewal option being evaluated. Unpriced options shall not be used. If a priced option is not available a succeeding lease is required.
- (14) Justifications for space and Allowances are also necessary for supplemental lease agreements for expansions, succeeding leases, etc. Lease extensions are to be avoided.
- (15) If the preapproved space requirements and/or Allowance are not considered adequate by the contractor, the contractor will have the following options:
 - (a) Apply to the CRS for revised allowances;
 - (b) Complete the negotiations and submit the lease package for DOE review(s) and approval(s) for space and/or rent outside the thresholds; or
 - (c) Assume all costs for space and rent over the approved square footage and Allowance.
- (16) If the contractor negotiates a total acquisition cost that is equal to or below the Allowance and is in compliance with all other requirements of this Order, no further DOE review(s) of the lease package will be necessary. "Total Acquisition cost" means the sum of all amounts necessary to provide fully serviced, turnkey space plus any approved special requirements.

If the total acquisition cost exceeds the Allowance, the lease package will require field office and perhaps Headquarters review, depending on the annual rent. It will be necessary for the lease package to contain all the documentation required for a standard DOE lease review.

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- (18) Contractors that are found to be performing their leasing activities unsatisfactorily are subject to being reverted to procedures outlined in paragraph 7e and required to submit their lease actions to DOE for pre-award review(s).
- (19) In addition, the solicitation for space must include the clause specified in paragraph 7g(6)(g) regarding energy conservation and must meet the requirements of Paragraph 7k, "Alterations to Leased Space After Initial Occupancy."
- e. Contractor Leasing Procedures, Contractors without an Approved Leasing System. When a contractor does not have an approved leasing system, then the procedures of paragraphs 7d(1) through (6), and paragraphs 7g(2) through (15), except paragraph 7g(13)(b), must be followed.
- f. Emergency Contractor Leasing. If leased space is necessary to house either new DOE contractors during the transition into new contracts, or existing contractors with urgent and compelling short term lease requirements, the requirements of paragraphs 7c, d, e and g are waived except for the following:
 - (1) The space requirements must be approved by the appropriate DOE official;
 - (2) The term of the lease shall not exceed 18 months;
 - (3) Competition must be sought; and
 - (4) Reasonableness of price shall be demonstrated as follows:
 - (a) If 10,000 square feet or less--appraisal of fair annual rental, or a minimum of three current comparable lease rentals, or a minimum of three documented competitive offers.
 - (b) If over 10,000 square feet--appraisal of fair annual rental.
 - (5) Initial and subsequent alterations may not exceed 25 per cent of the annualized base rent without DOE approval.

- (6) If leased space is determined to be the only option for the contractor's long term space requirements, the contractor shall have a lease agreement for the permanent space requirements consummated within one year of the effective date of their contract.
 - (7) If the emergency space will be replaced by leased space, the solicitation for replacement space cannot include moving costs as an award factor.
 - (8) The contractor may not lease general purpose office space to house DOE or other governmental personnel.
- g. Policies and Procedures. The policies and procedures of this paragraph shall be followed by DOE in leasing real property. For applicability to contractor leasing see paragraphs 7c, d, e, and f. In cases where authority and funding have been obtained, the acquiring office must follow the regulations set out by GSA in FPR Temporary Regulation 68, 48 FR 12522, dated 3-25-83, as confirmed in Federal Acquisition Circular 84-1, 49 FR 12972, dated 3-30-84. Subsequent statutes and regulations such as the General Services Administration Acquisition Regulation, Competition in Contracting Act, repeal of Section 322 of the Economy Act, modified appraisal requirements for small leases, etc., must be complied with as appropriate. Some of the requirements are further explained in ensuing paragraphs.
- (1) Any lease for a public building, as defined in Section 13 of the Public Buildings Act of 1959, with a net annual rent over \$1,650,000 is subject to the requirement that a prospectus be submitted to GSA for obtaining approval of the appropriate Committees of Congress prior to any commitment by the Government. This is limited to GSA delegated lease actions. It should be noted the prospectus threshold is subject to adjustment annually based on changes to the Department of Commerce Composite Index of Construction Costs. Contact your GSA regional office for the latest threshold.
 - (2) "Termination for Convenience" is not a term properly used in a lease. A clause that provides the Government or contractor with the right to cancel the lease after a given time is a cancellation clause. To enter into a lease with such a clause, an amount equal to the full rent covering the period up to the first possible date of cancellation and the amount of the cancellation payment due on that date, if any, must be specifically obligated or committed to the lease contract. The total amount of the Government's liability for payment under the terms of a lease must be committed at all times during the term of that lease.

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- (3) Delineated Area. The area defined must be large enough to provide adequate competition. In addition, FPMRs require that preference be given to locations within the central business district of the central city within a Standard Metropolitan Statistical Area unless such a location is incompatible with the DOE mission. Location outside the central business district must be fully justified and documented.
- (4) Advertising. When a new requirement for leased real estate is determined, it must be advertised to the public if the space exceeds 10,000 square feet. Paid advertisements must be placed in local newspapers. Competition must be obtained except in those cases where absolute justification can be documented for sole source acquisition of the required real estate interest. Such documentation and finding must be signed by the real property representative and/or other designated officials, depending on established thresholds, in the acquiring office. The public notice will include the delineated area, amount and type of space needed, date space is required, term of the lease (both firm and renewal options), and the source where further information may be obtained.
- (5) Market Survey. After responses to the advertisements are received, a market survey shall be conducted by a representative of DOE or the contractor to inspect each property offered and any others that are available and can meet the Government's needs. The file must be carefully documented for any properties rejected. The market survey will set the posture for the balance of the leasing action. Therefore, the individual representing DOE or the contractor must have full knowledge of the requirements so that only those properties that can meet the requirements are accepted.
- (6) Solicitation for Offers.
 - (a) For leases of 10,000 square feet or more, a set of minimum specifications will be prepared in the form of a solicitation for offers. Requirements must be based on performance and must include such items as required levels of heat, light, and power; fire protection; partitioning; any special equipment installation needed; responsibility for utilities and janitorial services; hours the building is open; parking needed; outside maintenance such as snow removal or landscape maintenance; and any factors to be considered in evaluation, such as the required occupancy date or proximity to another location, availability of eating

establishments, transportation and other facilities, etc. Any special requirements associated with the space need must be clearly identified.

- (b) The solicitation for offers will be distributed to all known offerors of space which have the potential to meet the Government's requirements. Those offerors will then be asked to submit a written offer to lease at a specific rental. Offerors who do not respond should be contacted and asked the reasons for nonresponse. Information on the required contents of the solicitation for offers will be found in the Leasing Handbook and GSA Acquisition Regulation.
- (c) The solicitation will require that the space to be leased will be altered to DOE's specifications prior to acceptance and that the cost will be amortized as part of the rent. All maintenance, janitorial services, and cost of utilities shall be the responsibility of the lessor under the lease. In any case where there are deviations from this paragraph, the file will be documented with complete justification.
- (d) The solicitation may include the requirement for renewal options if justified by the program. If such options are solicited, priced options shall be required, which may or may not be a part of the award evaluation.
- (e) Escalator clauses for operating costs may be used in multiyear leases. The escalator should be based on the Consumer Price Index (CPI) for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, published by the Bureau of Labor Statistics. Other forms of escalation may be considered. However, the file must be clearly documented explaining why the CPI was not used.
- (f) Tax adjustment in multiyear leases shall be made in accordance with a clause similar to the following.
 - (1) The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the

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receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

- (2) The Government's share of the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for non-payment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its share of the tax increase.
- (3) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the lessor or the Government alone. If the Government is precluded from taking legal action, the lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the lessor for all cost and shall execute all documents required for the legal proceedings. The lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contest the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.
- (4) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

- (g) The solicitation must include a clause requiring the successful offeror to meet the DOE Energy Conservation Voluntary Performance Standards for Commercial

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Buildings. The clause should essentially state, "Any proposed new building must comply with 10 CFR Part 435, Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings. All offers on existing buildings shall include retrofit of building components to meet the standards of 10 CFR Part 435, where they are life cycle cost effective over the firm term of the lease. Guidelines for determining the life-cycle-cost effectiveness of retrofit in existing buildings are found in 10 CFR Part 436." Questions regarding these standards are to be addressed to the Energy/Utilities Team, Office of Infrastructure Support Services, for guidance and assistance.

- (7) Negotiations. Negotiations will be conducted with all offerors to clarify any remaining issues, attempt to make all offers responsive to the solicitation for offers, and attempt to negotiate the rentals offered as low as is economically reasonable. Award must be made to the responsible offeror with the lowest price. If factors other than price are to be considered in the award of a lease contract, then those award factors must be stated in the solicitation or they may not be used. Award factors requiring subjective evaluation are not to be used since they are a major source of protests. Objective award factors to which dollar values can be assigned and supported are preferred. All offers must be evaluated using the same criteria and must be reviewed for responsiveness to all requirements of the solicitation. A record of negotiations with reasons for rejecting offers and giving details of discussions with each offeror must be prepared and placed in the lease file prior to award of a lease.
- (8) Cancellation Clause. Leases may contain a clause that requires payment for early cancellation only if, at the time the lease is signed, DOE obligates sufficient no-year funds to pay the total liability. (Also, see paragraph 7b(2).)
- (9) Lease Extensions. Lease extensions will be avoided wherever possible. Succeeding leases will be used instead, providing the opportunity for update to current Government lease acquisition statutes, regulations and policy.
- (10) Appraisal. After offers are received, negotiations completed, and the low responsive offer is identified, an appraisal is obtained to determine the fair rental value. Full appraisals are required for leases in excess of 10,000 square feet and may be obtained for smaller leases, if desired. A format similar to the GSA Form 1241E, "In-Lease Appraisal" should be

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used for leases that are for less than 10,000 square feet. However, a complete discussion of the adjustment of comparable to the subject will be included, as well as maps, photographs and other details adequate for a reviewer to fully understand the appraisal conclusions. The lease files shall contain an appraisal review document to verify compliance with paragraph 2d of Chapter III hereunder.

(11) Fair Annual Rental Value. The Government or the contractor must negotiate the lowest possible economic rent. It is general DOE practice, in real estate acquisition, not to exceed the approved appraisal by more than 15 percent. No lease rental may exceed the approved appraisal by more than 15 percent without the prior review and approval of the Chief, Real Property Branch. In any lease action where the appraised fair rental value is exceeded, the file must be documented to show that vigorous negotiations were conducted prior to acceptance of a rental or before submittal to Headquarters for approval.

(12) Award.

(a) If the rent falls within the required limits, the real estate specialist in the acquiring office will approve the documents and the lease may be awarded. At the time of award, other offerors are to be advised in writing that an award has been made. However, if the lease is for 10,000 square feet or more, written approval of the real property representative and of his/her supervisor are required.

(b) The award is made by sending a letter of acceptance from the contracting officer to the successful offeror, together with the Standard Form 2 or contractor modified version of the Lease for Real Property, "Mandatory and Recommended Clauses" as discussed in paragraph 7d(5) above, GSA Form 3518, "Representations and Certifications, the solicitation, and any additional paragraphs that have been negotiated.

(c) The lease must have a date of occupancy at the time of award; and, while the contract is binding as of the date of award, rent does not begin until the effective date of the lease, which is the date the space is completed and ready for occupancy by the Government or its contractors. If the occupancy date changes, and the change is approved by the Government or contractor, then a supplemental agreement shall be executed. The lease is unsigned by the Government when it is mailed to the

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offeror, and is signed and dated only after it is returned. Care must be taken to assure that the lease is properly signed, witnessed, and dated by the lessor, or duly authorized representative, and by a Government contracting officer acting within proper limits of his/her authority.

- (d) The lease will be prepared in an original and three copies, with the original retained by the acquiring office, an executed copy to the lessor, and a copy to the appropriate Departmental finance office.

(13) Inspection.

- (a) Prior to acceptance and occupancy of the facility by the Government, representatives of both the lessor and DOE shall inspect the property and determine that it meets the terms of the lease. An inspection report shall be made setting out the results of the inspection.
- (b) Inspections are also encouraged during the term of the lease to ascertain compliance with the terms and conditions of the lease. It is important that the condition reports be adequate and accurate so that they may serve as a reliable measure of any change in the condition of the property. They should be signed by both parties.
- (c) Similarly, an inspection of the property must also be conducted upon termination of the lease. The final condition report, when compared with the initial reports, will serve to determine any restoration obligation under the lease.

(14) Modification to Lease. Lease renewal options or justified extensions with annual rentals exceeding \$500,000 will be submitted to the Chief, Real Property Branch. In addition, amendments and modifications must be submitted for the approval of the Chief, Real Property Branch, when:

- (a) The amendment increases the space and/or the rent so that the sum of rent in the basic lease and all amendments exceed \$500,000 per annum.
- (b) The modification to the terms of the lease is a deviation from the provisions of this Order or a

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deviation from any of the regulations applicable to Government leasing, whether or not such regulation is referenced in this Order.

(15) Condemnation. If a leasehold interest cannot be acquired through negotiations, condemnation action may be considered but will be approved only in those instances where there is no alternative. Any proposal to condemn a leasehold interest will be undertaken in accordance with the procedures outlined in Chapter IV, "Condemnation."

(16) Quasi-Real Property Actions. Some real property requirements may be more efficiently acquired by a service or supply contract without jeopardizing DOE legally or financially. Those considered appropriate for inclusion in this Order and the conditions relating to each are as follows:

(a) Apartments for personnel on travel status.

- 1 Contract term shall be less than a year;
- 2 Volume of use by travelers and cost of occupancy shall justify this arrangement by cost comparison to standard travel lodging facilities; and
- 3 The acquisition must be competed.

(b) Commercial storage units not including warehouses.

- 1 Contract term shall be less than a year; and
- 2 The acquisition must be competed.

h. Leases Signed by a Contractor at No Risk to the Government

(1) A DOE contractor may enter into a lease for a period beyond that of the fiscal year, or the period of the DOE contract, as long as DOE is not identified as being liable for any of the lease costs, in case of a termination of the contract, and the lease costs are recovered through an indirect expense pool. The contract must contain a clause which expressly states that the terms of the leases and all associated costs are the sole responsibility of the contractor or the contractor and/or the contractor's corporate Headquarters, as appropriate. The lease between the lessor and the contractor must not in any manner or form identify DOE as a potential correspondent who may be liable for any lease payments or any other associated costs not paid by the contractor. As a matter of policy, nothing in the lease shall bind or purport to bind the Government to the lease.

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- (2) Allowable costs for the lease will be in accordance with Federal Acquisition Regulation 31.205-36, Rental Costs.

i. Leases Signed by GSA for DOE Space.

- (1) When general purpose office space is required to house DOE employees, or a mix of DOE and contractor employees, the requirements should be quantified as for any other space need. The package containing a justification for the space requested, the delineated area, date the space is required, the completed Standard Form 81, "Request for Space," and Standard Form 81A, "Space Requirements Worksheet," and a complete listing of special requirements is to be submitted to the Director of Real Estate in the appropriate GSA Regional Office. The standard forms can be obtained at the nearest GSA store.
- (2) Any space request to be submitted to GSA, which does not comply with Federal office space utilization policy, shall be submitted to the Chief, Real Property Branch, for review and approval. The submittal must fully justify the need to exceed the established guidelines. Headquarters will forward the space request to the appropriate GSA regional office after review and approval.
- (3) After GSA has advertised the space requirement, the acquiring office must be invited to accompany GSA personnel on the market survey, and GSA may issue solicitations only to offerors jointly agreed to by GSA and DOE. Once DOE agrees to issue the solicitation to a potential offeror, DOE has agreed to accept that space if it is the lowest responsive offer.
- (4) GSA must obtain DOE approval of the solicitation for offers before it is distributed. The copy is submitted for review and approval to the requesting office by GSA. Once the solicitation is approved by DOE, it binds DOE to accept any space that meets the requirements set out. Therefore, the solicitation must be promptly and carefully reviewed to assure that all of the requirements are included and properly stated and that DOE review time does not delay GSA's schedule to permit timely acquisition of the space. If there is a dispute, the Chief, Real Property Branch, should be advised immediately.
- (5) There are few valid grounds for objecting to the issuance, if the space is within the delineated area and the offeror can reasonably be expected to alter or renovate the space to meet the minimum requirements at an economic rent by the required date.

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- (6) Once a lease is awarded, GSA must work with the acquiring agency to obtain a layout of the space acceptable to the needs of DOE. Again, DOE must make certain that delays on its part do not prevent GSA from taking action to acquire the space by the time it is needed.

i. Leasing of Space Under GSA Delegated Authority. When space is leased under a delegation of authority from GSA, DOE may enter into a long-term lease, as specified in the delegation, without obligating funds beyond the current year liability.

- (1) A GSA delegation may be for a one-time specific space requirement or a generic delegation for certain classes of space needs.
- (2) By Delegation of Lease Acquisition Authority (Delegation), dated July 16, 1987, GSA granted to DOE long-term leasing authority. The authority is based on criteria as set forth in the Delegation and Memorandum of Understanding (MOU) included as Attachment I-1, "GSA Lease Delegation Documents."
 - (a) The DOE leasing authority under Public Law 95-91 (91 Stat. 565) is augmented by the delegation to permit leasing of special purpose space for up to 20-years firm, while committing annual obligation of funds.
 - (b) The delegation expands DOE leasing authority to general purpose space in communities meeting specific criteria, as set forth in the Delegation and MOU, for up to 5-years firm.

k. Alterations to Leased Space After Initial Occupancy.

- (1) Alterations to leased space may be accomplished after initial occupancy of the premises. Alterations must be fully justified as to need and cost. Regardless of whether the alterations are performed by the lessor or the tenant, an attempt shall be made to obtain a waiver of restoration from the lessor (as well as an agreement to maintain the alterations if the lessor is performing the work). The real estate file must contain a record of all alterations.
- (2) Payment for alterations performed by the lessor subsequent to initial occupancy and not included in the original rental rate may be accomplished by amortizing the cost over the remaining firm term of the lease or by lump sum payment. In either case, it is generally preferred for the improvements to remain the property of the lessor. This limits potential liabilities of the lessee arising from the alterations. Alterations by

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the lessor shall be accomplished by supplemental agreement to the lease.

- (3) Alterations may be made by the lessee in which case ownership should be retained by the lessee. Alterations by the lessee are discouraged because of potential liabilities arising from alteration to the real property of a third party. When such alterations must be performed by the lessee, every reasonable attempt should be made to obtain the right to abandon the alterations in place in lieu of the obligation to remove and restore.
- (4) CRSs in the field of leasing are authorized to approve alterations to leased space, subject to all other normal approvals for real estate transactions, up to \$500,000 per alteration project. Projects exceeding this threshold must be referred to the Office of Infrastructure Support Services for review and approval.
- (5) Alterations to contractor leased space must be reviewed by a CRS in the field of leasing whenever the cost of an alteration project exceeds \$25,000.

8. ACQUISITION OF OTHER INTERESTS.

a. Easements.

- (1) Permanent easements are used to acquire lineal rights-of-way for such uses as roads, railroads, pipelines, and utilities, or to restrict the use of another's property by acquiring specific rights in that property. When an easement is the appropriate estate and permanent improvements will be made by the Government, permanent rather than temporary easements must be used.
- (2) Temporary easements are sought to gain short-term or one-time access to a property or right-of-way across it; for example, for hauling material during a project construction phase, or to do nondestructive testing. If the cost of a temporary easement exceeds \$10,000, an appraisal supporting that cost is required. The acquiring office may obtain an appraisal if the cost is less than \$10,000; but in any event the file must be documented to demonstrate that the cost agreed to is fair and reasonable.
- (3) Procedures. Permanent easements must be sought at no less than the appraised fair market value. When it is necessary to purchase an easement, the field element will follow procedures for purchase of property found in paragraph 3. The acquisition of easements may be required for rights-of-way for

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access roads and utility lines that cross or encroach on the rights-of-way or property of railroad companies, public utility companies, cities, counties, and States. In this case, an easement from the owner of the underlying fee is required and an agreement from the user must be obtained equal in duration to the life of the easement. If the licensor demands payment of more than the appraised value of the right to be acquired, or if the licensor is not vested with authority to grant the needed easement rights, consideration will be given to the acquisition of a permanent easement by condemnation.

b. Licenses and Permits.

- (1) DOE is authorized to acquire temporary use of real property by license or permit in accordance with Public Law 95-91 (91 Stat. 565) and the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). This type of interest will be obtained when the proposed use is of a temporary nature. No permanent construction will be placed on land where the Government has only a temporary interest. Since licenses or permits contain no warranty of title, it must be determined prior to making use of property that the owner has sufficient interest in the property to grant temporary use. Licenses and permits will be reviewed by legal counsel as to legal sufficiency prior to execution. The terms "license" and "permit" are identical and interchangeable. Usually, the term "permit" applies only when one Government agency grants the use of its property to another Government agency. Contractors may acquire temporary use of property under license or permit if the use is required to fulfill contract commitments and the action has been authorized by the appropriate field element.
- (2) A written notice to the owner will be made when the temporary interest is no longer required. A joint inspection shall be made with the property owner or the designated agent sufficiently in advance of the end of the use period to allow restoration within the use period, thus avoiding a claim for added rental compensation. This should be done even though the time period of the Government interest is contained in the executed instrument.

- c. Use of Real Property Accepted as a Gift. Real property, accepted as a gift under section 652 of the DOE Act, 42 U.S.C. 7262, or its proceeds, must "be used as nearly as possible in accordance with the terms of the gift, bequeath, or devise."

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| d. Improvements to Non-Government-Owned Property.

- | (1) Under decisions of the Comptroller General, the Government is generally precluded as a matter of policy from using appropriated funds to make improvements to non-Government-owned property.
- | (2) In addition, the Comptroller General has established as governmental policy that, in general, permanent improvements may not be made to non-Government-owned land.
- | (3) The Comptroller General has tended to look at this issue on a case-by-case basis. In certain cases, the Comptroller General has concurred in exceptions to this policy. The basic premise on which the Comptroller General has allowed exceptions to the policy against permanent improvements to private property is whether the Government's interests in the overall project are adequately protected with respect to such improvements. In making such a determination, the Comptroller General has established the following general criteria that must be addressed in order to allow the use of Federal funds for such improvements: (a) the expenses of the improvements are nominal in comparison with the total price of the contract; (b) the improvements are incidental and essential for the accomplishment of the authorized purpose of the appropriation; and (c) improvements are used for the principal benefit of the Government (46 Comp. Gen. 26, 27, (1966); 42 Comp. Gen. 480 (1963)).
- | (4) It must be emphasized that it is exceptional to permit permanent improvements to non-Government-owned real property. Requests for approval must be submitted to the Chief, Real Property Branch, before any such action is taken.

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GSA Lease Delegation
Documents

1. Delegation of Lease Acquisition Authority
2. Memorandum of Understanding
3. Headquarters Implementing Memorandum

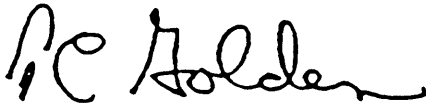
DELEGATION OF LEASE ACQUISITION AUTHORITY

Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, lease acquisition authority is hereby delegated to the Secretary of Energy. This delegation shall extend to the leasing of space under the authority of Section 210(h)(1) of the above-cited Act, for terms not to exceed 5 years, for general purpose office space. Additionally, authority is hereby delegated to the Secretary to enter into lease contracts for terms not to exceed 20 years for special purpose space to augment existing Department of Energy (DOE) statutory authority.

This authority is subject to the following conditions:

1. The authority to lease can be redelegated only to officers, officials, and employees of DOE who have been adequately trained as or lease contracting officers.
2. DOE will make every reasonable effort to utilize all leased locations in accordance with Federal Property Management Temporary Regulation D-73, effective February 11, 1987.
3. The general purpose leasing authority is applicable only in geographic areas where the General Services Administration (GSA) controls less than 250,000 square feet of space. The special purpose multiyear authority referenced above is without geographic limitations.
4. Prior to undertaking any leasing actions for new acquisitions, renewal options, or succeeding leases, DOE must verify, with the appropriate GSA Assistant Regional Administrator, Public Buildings Service, that no suitable vacant Government-controlled space is available nor any planned consolidations of Federal agencies in the community.
5. Within 90 days after execution of each lease pursuant to this delegation, DOE will provide the Office of Governmentwide Real Property Policy and Oversight the following information: name and address of the leased building, total square footage leased, utilization rate of office space leased, annual rental, estimated cost of services or utilities to be paid separately by the Government (if any), and the term of the lease, including any cancellation or renewal rights.

The authority granted herein shall be exercised in accordance with the requirements and limitations of the above-cited Act and other applicable statutes and regulations, including the General Services Administration Acquisition Regulation, as amended, to include the competition in Contracting Act.



Administrator

July 16 1987

Date

Memorandum of Understanding
General Services Administration
and the Department of Energy


The purpose of this memorandum is to establish procedures for implementation of the delegation of leasing authority from the Administrator of General Services Administration (GSA), under which the Department of Energy (DOE) has assumed responsibility for the leasing of general purpose office space in geographic areas where GSA controls less than 250,000 square feet of space; and multiyear leasing authority for special purpose space to augment DOE'S statutory authority. The delegation, Enclosure 1, provides authority for firm term leases up to 5 years for general purpose office space and not to exceed 20 years for special purpose space.

One of GSA's primary concerns in granting the delegation of leasing authority was to effect more efficient utilization of Federal personnel and administrative costs devoted to providing Federally-owned and leased space for various Federal agencies. It is, therefore, intended that full responsibility for all cited lease actions be assumed by DOE. It is the mutual desire of GSA and DOE that availability of Federally-controlled space be considered for DOE offices and, therefore, pursuant to section 101-17.102 of the Federal Property Management Regulations (FPMR), Temporary Regulation D-73, DOE will continue to make space needs known to GSA's regional offices, and shall document their file if space is not available.

1. DOE activities shall continue to qualify for use of space in Federal buildings administered by GSA, whenever feasible, according to the following criteria:
 - a. Present DOE space assignments in Federal buildings are not terminated by the delegation of leasing authority, nor may DOE lease replacement space for any assignment currently housed in a Federally-controlled building without obtaining the prior approval of the appropriate Assistant Regional Administrator for Public Buildings Service. All space relinquishments by DOE must be in accordance with FPMR requirements.
 - b. Requests for future space requirements in Federal buildings will be honored in parity with all other Federal space requests.
 - c. Present and future space assignments in Federal buildings will be subject to rent as provided by P.L. 92-313, and as implemented by the FPMR's. In addition, DOE assignments in GSA space may be subject to actual expenses as noted in FPMR D-73, section 101-17.302.

2. All existing single tenant GSA leases for the DOE locations noted in Enclosure 2, together with all correspondence and supporting documentation, will be transferred from the GSA region to the appropriate DOE office on or before September 1, 1989. GSA leases, which include space for other Federal activities as well as DOE, will not be transferred but will continue to be administered by GSA.
3. All outstanding requests for leased space outside of the GSA controlled areas, will be returned by the GSA regions to the appropriate DOE office except those cases in which a GSA region has in hand a signed lease instrument executed by a prospective lessor as a result of completed negotiations. In such cases, the region will proceed to obtain necessary GSA clearance. The lease contract, however, will be executed on behalf of the Government by the DOE contracting officer. Upon completion, all correspondence and supporting documentation will be promptly transferred to the appropriate DOE office.
4. Prior to undertaking any leasing action for new acquisitions, renewal options, or succeeding leases, DOE must advise the appropriate Assistant Regional Administrator for Public Buildings Service by providing the square footage, location, and special requirements of the space to be leased. DOE may proceed with leasing actions 10 working days after the appropriate regional official has been advised, providing the official determines that no suitable Government-controlled space is available nor are any consolidations planned for Federal agencies in the community where the lease action is to occur. If no such information has been provided to DOE, DOE may proceed to complete the leasing action. The Commissioner of the Public Buildings Service will be the deciding official in all matters of contention arising between the regional GSA offices and the DOE offices in regard to lease actions under this delegation.
5. Leases with average net annual rentals of \$1,500,000, including all known costs to provide fully serviced, occupiable space, will require submission to the Office of Management and Budget (OMB) and to the House Committee on Public Works and Transportation (HCPWT) for consideration prior to award. DOE is responsible for preparing the prospectus proposal package and forwarding it to the appropriate regional office of GSA for submission to the GSA central office, OMB and the HCPWT.


Administrator (Acting)
General Services Administration


Assistant Secretary
Management and Administration

United States Government

memorandum

DATE: MAR 23 1990

REPLY TO
ATTN OF: MA-202.31

SUBJECT: General Services Administration Delegation of Lease Acquisition Authority

To: Distribution

The final documentation implementing the delegation of lease acquisition authority from the General Services Administration (GSA) has been signed by the Department of Energy (DOE) and GSA. The delegation allows DOE to lease general purpose office and storage space, for a maximum term of 5 years, outside of metropolitan areas where GSA controls at least 250,000 square feet of space. In addition, GSA has delegated its multiyear leasing authority to DOE for acquisition of special purpose space for periods up to 20 years. This allows multiyear, firm-term leases while obligating only the current year's rental obligation.

Recognizing that many offices have limited resources trained in real estate leasing, this office has put into place an interim procedure for implementing the GSA delegation. Headquarters and three field offices currently having staff that meet the GSA qualifications are agreeable, subject to workload demands, to assist in acquiring leased space under the delegation. The office receiving the assistance will be expected to fund all travel costs of the "assistance team" as well as providing logistical support throughout the lease action.

While this assistance team is available, offices which desire to utilize the delegation are encouraged to request redelegation from the Director of Administration. To obtain a redelegation, consistent with the intent of the GSA delegation to DOE, the requesting office must have on staff a trained realty specialist with adequate experience in lease acquisition to assure compliance with GSA regulations, DOE policies, and good real estate practices.


In addition, the office must establish a review and concurrence process, which will review the proposal for compliance with generally accepted principles of Government contracting. It should be stressed that this is a concurrence review, not an approval. As such, the field office manager, or his/her designee, may determine disposition of comments, which cannot be resolved between the realty specialist and the reviewer. Finally, as provided in the GSA delegation, there must be a contracting officer who has completed the designated courses for executing real estate contracts. The contracting officer could be the realty specialist, the reviewer, or a third party. Because real estate leasing is outside the DOE procurement line of authority, it need not be a warranted DOE contracting officer.

Any office requesting redelegation should submit their plan for implementation, including identification and qualifications of the individuals who will perform the functions identified, to the Real Property Branch for review. Upon review of the plan, the Real property Branch will communicate with the requesting office, identifying any areas needing clarification. Delegation will be by letter from the Director of Administration. That letter will include any conditions or limitations on the delegation.

Delegations which would utilize the Headquarters assistance team for a portion of the functions (realty specialist, reviewer, contracting officer) will be considered. It is our intention to remain as flexible as possible to meet field needs.

Copies of the Delegation of Lease Acquisition Authority and Memorandum of Understanding outlining the conditions of the delegation are attached. Your offices should contact the appropriate GSA office in your area to obtain copies of the current General Services Administration Acquisition Regulation. Part 570 outlines leasing requirements. Section 501.603-70(h)(1)(vi) provides current training requirements for real estate leasing contracting officers.

If there are questions regarding this memorandum, or if we can be of further assistance, please contact Roger Arola at FTS 895-3503 or locally at 586-3503.


Charles R. Tierney
Director of Administration

Attachments

CHAPTER II

DISPOSAL OF REAL AND RELATED PERSONAL PROPERTY

1. DISPOSAL OF UNITED STATES-OWNED LAND AND/OR IMPROVEMENTS.

- a. Real property holdings of DOE and its contractors must be limited to the minimum required to accomplish assigned missions. Real property is excess when it is not needed to fulfill current requirements and DOE has no need for it in the foreseeable future.
- b. The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471), provides that each Federal agency will report excess real property under its control, except in foreign countries, to GSA. Supervision and direction of disposal of surplus real property, except in foreign countries, are the responsibility of GSA. Unless authorized by a specific act of Congress, all disposal of real property will be made under the authority of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471), and implementing regulations issued by GSA.
- c. The DOE has limited authority to dispose of real and related personal property. These specific statutory authorities are discussed later in this Chapter. All other real and related personal property must be disposed of through GSA or in conformance with regulations issued by GSA.
- d. Real property utilization surveys are required by Executive Order 12512 and FPMR 101-47.2, respectively. The intent of the surveys is to identify real property that can be declared excess and reported for disposal. The Executive order surveys apply to all DOE sites except those sites consisting exclusively of land withdrawn from the public domain. The Executive order surveys are conducted on a 5-year cycle. Those surveys are to be actual, onsite inspections of land and improvements. It is DOE policy to conform to the survey report format prescribed by GSA. DOE Headquarters will attempt to keep field elements informed of changes by GSA in the format.
- e. Annual reviews required by FPMR 101-47.802 must be made by all Federal agencies on their real property holdings, including leased properties (see Attachment II-1, "Annual Reviews"). Initial reviews should be based on onsite inspections. Subsequent reviews can be desk reviews rather than actual, onsite inspections. The report summarizing the survey findings should be kept on file and available for review in the field office.

- f. When the PSO or designee makes a determination that certain real and related personal property are no longer required by a program, the appropriate real property representative will prepare a memorandum stating that the property is excess to the program needs, together with a completed Standard Form 118, "Report of Excess Real Property," (SF 118) giving the recommended method of removing the property from DOE accountability. All appropriate local concurrences (such as counsel, environmental, etc.) must be obtained. The memorandum must be approved in writing locally or by Headquarters if the action exceeds the field element's authority. The field element will either screen the property to determine if it is excess to the needs of the entire Department or request the Chief, Real Property Branch, to conduct such screening. If Headquarters approval of the disposal action is not required, the field element would report the property to GSA for disposal. Documentation to be submitted to GSA is identified in CFR 101-47.2.
- g. For disposals that include both Government-owned land and improvements, the memorandum should address the following items:
- (1) Summary of the affected site and DOE mission and reasons why this property is no longer required in support of the mission;
 - (2) General description, location, size, acquisition cost, nature of real estate interest proposed for disposal, brief history, effects upon severance, mineral and other rights, impact upon the natural resource conservation program of the installation, existence of facilities of cultural or historical significance as defined by 36 CFR 800, and any other relevant information, which explains the proposed disposal action;
 - (3) A brief discussion of the environmental and economic impact of the proposed disposal action, with a summary of the environmental requirements, need to comply with environmental laws and regulations (see paragraph 3f(2) of Chapter I;
 - (4) Number of personnel affected;
 - (5) Detailed estimate of one-time closing and other costs and of recurring annual savings, including a breakdown of operational and maintenance cost savings;
 - (6) Disposition of, and impact upon, tenants of the installation;
 - (7) Justification for portions of the installation proposed for retention, if any;

- (8) Nature of existing outgrants, permits, or permitted temporary uses;
- (9) Any recent appraisal reports which are available;
- (10) Any restrictions to be imposed on the excess land;
- (11) Proposed date the facilities will be vacated;
- (12) For disposals of real property with an aggregate acquisition cost of \$1 million or more, evidence of compliance with the requirements of 41 CFR 101-47.301-2, "Applicability of Anti-Trust Laws";
- (13) A site and vicinity real estate map identifying the parcels;
- (14) Photographs, if available;
- (15) Number, type, use, size, age, and general condition of facilities and utilities proposed for disposal;
- (16) Any known interest in acquiring the property;
- (17) Indication that DOE has not contemplated acquisition of any land for similar use at or near this location and that the property has been screened at the site;
- (18) Certification that requirements of DOE 5400.5, RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT, of 2-8-90; Section 120(h) of CERCLA; and any other Federal, State, or local regulations have been met for residual radioactive material and any other hazardous substances. This applies whether Government-owned land, improvements, or both, are being disposed of. Also see paragraphs 10 and 1p below;
- (19) Completed SF 118, and other requirements of 41 CFR 101-47.202-2, ready for transmittal to GSA;
- (20) Certification of compliance with 40 CFR 761 regarding use and storage of Polychlorinated Biphenyl (PCB) will be required when there is any possibility PCBs have been utilized (transformers);
- (21) A statement regarding presence or absence of friable asbestos; and,
- (22) Any underground storage tanks must be identified, in Block 18 of the SF 118, as to location, size and former use.

- h. In addition to other information, the SF 118 will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included, if appropriate, in accordance with 41 CFR 101-47.202-7. Information on flood hazards will be included as required by 41 CFR 101-47.202.2(b)(6).
- i. When Headquarters approval of a proposed disposal is required, the Chief, Real Property Branch, will transmit the completed report of excess real property to the appropriate GSA regional office. A copy of the forwarding letter to GSA will be furnished to the field element.
- j. GSA will review the submission to assure that the documentation is complete, that the property is not encumbered, and that it has a marketable title. GSA will then advise the field element of the acceptance date of the report of excess. DOE has responsibility for maintenance and safety, as defined in 41 CFR 101-47.402-2, for 5 fiscal quarters from the date of acceptance of the report of excess by GSA.
- k. Subject to the approval of the Administrator of GSA, reports of excess may be withdrawn or corrected at any time prior to disposition of the property by filing a modified SF 118 with the GSA regional office. Approval of the official signing the report of excess is required for significant corrections or withdrawals. (SF 118a, "Buildings, Structures, Utilities and Miscellaneous Facilities," 118b, "Land," and 118c, "Related Personal Property," should be procured from local GSA supply channels.)
- l. Interim use of excess and surplus property is permitted under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). GSA has general supervision, direction, and approval authority over interim use of such properties pending final transfer or disposal. As general guidelines, GSA will limit interim use to 1 year with the right to cancel on 30-day notice from GSA. Interim use may be by lease, license, or permit.
- m. When real property is transferred from one agency to another, it is GSA's policy under 41 CFR 101.47.203-7(f)(2) that the benefiting agency must pay fair market value for the property.
- n. At one time reservations of uranium, thorium, and other fissionable materials were routinely retained in conveyances of surplus real property. The Government's interest in these estates has been released by Title 42, United States Code, Section 2098.

- o. Whenever DOE enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, was known to have been released, or was disposed of, the contract must include notice of the type and quantity of such hazardous substance and notice of the time at which such storage, releases, or disposal took place, to the extent such information is available on the basis of a complete search of DOE files. The applicability of this requirement, and the contents of the notice are further specified in CERCLA section 120(h)(1)-(2), and 40 CFR 373.
- p. In compliance with CERCLA section 120(h)(3): in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, was known to have been released, or was disposed of, each deed entered into from the transfer of such property by the United States to any other person or entity shall contain:
 - (1) to the extent such information is available on the basis of a complete search of DOE files,
 - (a) a notice of the type and quantity of such hazardous substances,
 - (b) notice of the time at which such storage, release, or disposal took place, and,
 - (c) a description of the remedial action taken, if any, and,
 - (2) a covenant warranting that
 - (a) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and
 - (b) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

(The requirements of subparagraph (2) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.)

2. DISPOSAL OF DOE-OWNED IMPROVEMENTS WITHOUT THE UNDERLYING LAND.

- a. When real and related personal property are to be disposed of without the underlying land, it must be reported as excess real property for offsite removal. The accountable office will follow the same procedures as for disposal with the land. In addition to the documentation required in paragraph 1a - p, if abandonment in place or demolition of the property is recommended, at least two independent estimates of salvage value must also be obtained. If no one within DOE has a need for the property and there are no purchasers during the GSA screening process, GSA will notify DOE and the accountable office may proceed with disposition. The authority for this disposal was delegated to Executive agencies by GSA in 41 CFR 101.47.
- b. Once GSA has advised DOE that the excess property has been screened and no interest has been expressed, the entire financial and administrative responsibility rests with DOE. Cost for whatever future actions are required must be committed prior to closeout of the contract or project.
- c. Custody of Documents. Pending transfer or disposal of excess property, the field element will retain custody of legal documents relating to the acquisition, temporary use, or disposal of the property. During this period, the field element will make available to appropriate GSA officials copies of property documents needed to proceed with the transfer or disposal action. Originals of legal documents will be furnished to GSA to effect a final transfer or disposal of the property.
- d. Personal Property. Personal property at installations due to be discontinued shall be disposed of in accordance with DOE Property Management Regulations (PMR) 109-43.311-5 and PMR 109-50.
- e. Excess Property Not Reported. No reports to GSA are required for:
 - (1) Excess non-Government-owned property held under lease, permit, license, easement, or similar instrument, when Government-owned improvements are to be transferred to the owner of the land in restoration settlement and:
 - (a) The lease or other similar instrument is subject to termination by the grantor or owner of the premises within 9 months;
 - (b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than 9 months of use and occupancy;

- (c) The term of the lease or other instrument would preclude transfer to, or use by, another Federal agency or disposal to a third party; and
 - (d) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which do not exceed a total of 2,500 square feet.
 - (2) Leased space assigned by GSA and land and improvements owned by and permitted from other Government agencies.
 - (3) Excess timber, sand, gravel, and stone-quarried products and growing crops on nonexcess land regardless of value.
 - (4) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain.
 - (5) Excess prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers (with or without undercarriages), which are located on nonexcess land. For disposal only, such structures shall be reported as personal property and disposed of in accordance with DOE PMR 109-43-3.
- f. Property that otherwise would not be reported because it falls within the exceptions under subparagraph (1) above shall be reported to GSA if:
- (1) Government-owned improvements are located on the premises; or
 - (2) The continued use, occupancy, or control of the property by the Government is needed for the operation, production, or maintenance of other property owned or controlled by the Government that has been reported excess or is required to be reported to GSA.

3. DOE AUTHORITY FOR DISPOSAL OF REAL PROPERTY. DOE can dispose of real property and related personal property under certain statutory authorities when the proposed action meets the provisions and requirements of the specific authority.

- a. Atomic Energy Act. Under section 161g of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(g), DOE is authorized to "sell, lease, grant, and dispose of such real property as provided in this Act." Use of this authority is limited to those functions under the jurisdiction of the Act, and any disposal under this authority

requires prior approval of the Assistant General Counsel for General Law and the Chief, Real Property Branch. To obtain such approval, an Action Memorandum recommending the disposal shall be submitted, together with the pertinent background information and justification otherwise required for a disposal of real property, to the Chief, Real Property Branch, with a copy to the Assistant General Counsel for General Law.

- b. Atomic Energy Community Act. Under the Atomic Energy Community Act of 1955 (69 Stat. 472, 42 U.S.C. 2301 et seq.), DOE has authority to dispose of real property within the atomic energy communities of Oak Ridge, Tennessee, Richland, Washington, and Los Alamos, New Mexico, that were originally owned and managed by the Atomic Energy Commission. This Act establishes the terms, conditions, and procedures for the disposal of property in those communities.
- c. Power Marketing Administration. Under the Bonneville Project Act of 1937 (50 Stat. 731, 16 USC. 832 et seq.), the Administrator of the Bonneville Power Administration has authority "to sell, lease, or otherwise dispose of... such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this Chapter..." (16 U.S.C. 832a(e)). Exercise of this authority is subject to approval of the President. Note, however, that the generic authority contained in 50 U.S.C. 1622(d) limits the disposal of surplus power transmission lines, providing that if a State or Federal agency certifies that the surplus transmission line "is needful for or adaptable to the requirements of any public or cooperative power project, such line and the right-of-way acquired for its construction shall not be sold, leased for more than a year, or otherwise disposed of, except as provided in... this section, unless specifically authorized by Act of Congress."
- d. Naval Petroleum Reserves. Authority "to alienate from the United States the use, control, or possession of any part of the Naval Petroleum Reserves" or to exchange land is subject to consultation with the Senate and House Committees on Armed Services and the approval of the President, pursuant to 10 U.S.C. 7431(a).
- e. Oil Shale Conversion Facilities. Section 19 of the Federal Non-Nuclear Energy Research and Development Act of 1974, as amended, 42 U.S.C. 5919, authorizes DOE to enter into cooperative agreements for the conversion of oil shale into alternative fuels and to share with the other party the cost of construction of a modular facility for conversion. Subsection (b)(5)(B) provides that:

"After successful demonstration of the modular facility, as determined by the Administrator, the facility is eligible for financial assistance under this section for purposes of expansion into a full-sized facility and the applicant may purchase the Federal interest in the modular facility.... If expansion of such facility is determined not to be warranted by the Administrator, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value... or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the cost of such facility."

f. Energy Reorganization Act of 1974, as Amended, 42 U.S.C. 5821(B).

- (1) Section 111(b) of this Act provides that for facilities constructed from funds provided to DOE under authority of this Act:

"Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or designee determine in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of 30 calendar days (not including any day in which either House or Congress is not in session because of adjournment of more than 3 calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee had no objection to the proposed action."

- (2) As a general rule, this transfer authority is exercised at the beginning of a project. Its use requires the prior approval of the Chief, Real Property Branch.

g. Sale.

- (1) If DOE is authorized by specific statute or by delegation from GSA to sell real property to private parties, sale will be accomplished by competitive bidding, unless otherwise limited by contractual obligations.

- (2) DOE will not offer for sale any real property which has been contaminated with explosive or toxic materials or other harmful elements before full compliance with DOE decontamination procedures.
 - (3) As a general rule, all collections received by DOE shall be deposited as miscellaneous receipts to the General Fund of the Department of the Treasury unless otherwise authorized by statute or DOE 2200.6, FINANCIAL ACCOUNTING, Chapter IX, Reimbursable Work, Revenues, and Other Collections.
4. DISPOSAL OF OTHER INTEREST IN REAL PROPERTY. Granting of licenses, permits, and easements, as well as outleaping, are disposals of interest in property of varying degrees.
- a. If land or facilities controlled by DOE are temporarily underutilized, they may be outgranted to others for use during an interim period, within certain limitations, if the proposed use is consistent with Departmental mission requirements, security, and public safety. Prior to outgranting any interest in DOE-controlled real property, field elements must comply with the requirements and intent of Section 106 of the National Historic Preservation Act. The order of preference for outgrants when more than one party is interested in the property and no compelling reasons dictate otherwise is:
 - (1) Other Federal agencies;
 - (2) State and Local Governments; and
 - (3) Private organizations or individuals.
 - b. Outgranting DOE property for private use by lease will be done by obtaining competitive offers through advertising, whenever feasible. Competitive offers are not required when:
 - (1) Granting licenses or permits for a firm term of a year or less or to other Federal agencies;
 - (2) Granting leases to local, county, or State Governments; and
 - (3) Granting easements where it can be documented from the file that competition is impractical or unnecessary.

c. Granting Outleases.

- (1) Temporarily underutilized DOE-controlled property may be outgranted by lease; however, terms of such leases, including all options, shall be for not more than 5 years as provided in Public Law 95-91 (91 Stat. 565). Appraisals shall be obtained, and payment received should be no less than the appraised fair market rental value except in cases where it is clearly in the best interest of the Government to accept less. Such cases will be thoroughly documented in the file. The Interdepartmental Waiver Doctrine should be considered whenever there is a possibility of outgranting property to other Federal agencies.
- (2) All leases must specify, as a minimum, the amount of realty to be occupied, its specific location, a beginning and an ending date with any options, hours for use or access, amount of rent to be paid, who is responsible for operation of the leased property, and who is responsible for furnishing maintenance, utilities, and services. If the Government is to provide more than just the space, rates must be developed and added to the rent, if they were not included in the appraised fair rental value. Rental monies received will be deposited by the fiscal officer in the appropriate account.
- (3) All leases granting the lessee possession and use of improvements will require the lessee to ensure such improvements for their full value, if practicable, to make certain the improvements will be available for future DOE use. Outleased property will not be subleased or assigned without the lessee obtaining prior approval from the Departmental contracting officer. The outlease instruments will include a clause restricting sublease or assignment.

d. Granting Easements.

- (1) Granting easements over, in, across, and upon DOE lands places encumbrances on the property, which could have an effect on DOE use and disposal. Therefore, easements should be granted only when the granting does not conflict with DOE use or when the easement provides a clear benefit to DOE. When granting easements, ascertain that the Government's interest in adjoining property and its remaining interest in the easement area are protected. Easements are granted for such purposes as roads, railroads, pipelines, and utility lines.

- (2) Fair market value will be charged for easements. In those cases where the grantee is a State or Local Government or nonprofit organization, or when the grant will primarily benefit the Government, the easement may be granted without charge and the file should be documented to show the reason. DOE has authority to grant the following kinds of easements:
- (a) Easements for road widening are granted under 40 U.S.C. 345c. This law provides that, upon application by a State or a political subdivision, the Head of the Executive Agency having control over the property may, with or without charge, convey, or transfer such interest in the property consistent with the best interest of the Federal Government.
 - (b) General easement authority is contained in 40 U.S.C. 319. This authority is unlimited as to purposes for which easements may be granted; however, it should not be used for purposes which another statute specifically authorizes. The authority can be used to grant an easement requested by a State or its political subdivision for roads or streets on land under exclusive legislative jurisdiction of the Federal Government, if it is determined to be in the best interest of the Government to relinquish entire or concurrent jurisdiction to the State. Easements for roads and streets may be granted in perpetuity.
 - (c) With certain restrictions, general easement authority is also granted under section 161g of the Atomic Energy Act.
- (3) Terms and Conditions. Terms and conditions of easements shall include the following:
- (a) The grantee shall maintain the property in good condition and make necessary repairs;
 - (b) Use of the property by the grantee shall not interfere with Government operations. This may be omitted from easements for Federal-aid highways;
 - (c) Relocation of any facilities constructed by the grantee that interfere with Government operations will be required at the expense of the grantee. This relocation provision may be omitted when such provision would be impractical or unreasonably burdensome to the grantee; and

- (d) The easement will be terminated for default, for nonuse for a period of 2 consecutive years, or if the easement is abandoned.

e. Licenses and Permits.

- (1) Licenses or permits may be granted for temporary use of Departmental property and shall be revocable on 30-day notice. DOE may permit other Federal agencies to use DOE property as long as the use does not interfere with the Departmental mission. There is no charge to other Federal agencies for use of the real property. The term of the permit should be limited to the actual time required for contemplated use and may be for any period so long as it is revocable on not more than 30-day notice. Permits may be renewed with proper justification.
- (2) Payment of fair market value is required for all other users, unless (a) the proposed use will benefit only the Government, or (b) the user is a local Government entity. Amount of payment is usually based on local practice. Advice on charges may be obtained from the USACE, BLM, or local appraisers.
- (3) When a commercial user, such as a bank or service station, requests a permit to use DOE land, the field element must have a justifiable need for the offered service that cannot be filled offsite, must give all other like organizations the right to compete, and must require the recipient of the license or permit to pay not less than fair market value for the use of the Government property.

- f. Credit Unions. Specific legislative authority, at 12 U.S.C. 1770, "Allotment of Space in Federal Buildings," permits assignment of available space in Federal buildings, at no cost, for use by credit unions. To be eligible for such space, at least 95 percent of the members of the credit union must be Federal employees or were Federal employees at the time they joined the credit union. Members of their immediate families are also eligible. Credit unions that do not meet the requirements for free space but do provide service to DOE or onsite contractor employees, are eligible for space on a noncompetitive basis, although fair rental value must be charged. If more than one credit union desires the space, then the space must be competed among the credit unions.

- g. Automatic Teller Machines (ATM). By memorandum dated 12-4-85, the Director of Administration established DOE policy regarding ATMs, which is as follows:

- (1) If the ATM is solely for the use of members of a Federal or contractor credit union, which is authorized space on a DOE facility, then the installation of an ATM shall be authorized on a no-cost basis. It is recommended that a license be issued to the credit union rather than a lease.
 - (2) An ATM, which services commercial banking customers as well as credit union members may be allowed, provided that the ATM is operated by the credit union and not the bank.
 - (3) A lease is the proper vehicle to authorize the installation of an ATM when it is installed by a commercial banking institution and is presently in place on DOE-controlled property. Space shall be leased at not less than the fair market rental value. Installation of additional ATMs, which are not operated by Federal or contractor credit unions, must either be competed or, if one financial institution is allowed to install an ATM without competition, then all financial institutions must be allowed to install an ATM if they so request.
- h. Annexation. Annexation is an action taken by a municipality to incorporate DOE lands into its corporate limits. It is the policy of DOE not to oppose annexation except where such action would not be in the best interest of the Government. Such determinations are the responsibility of the PSO or designee, in consultation with counsel and a certified real property representative.
5. DISPOSAL UNDER GRANTS. Grants will be governed by standards set out in Attachment N, OMB Circular A-110, and 10 CFR 600.431. These cover the management and disposal of property furnished by the Government, paid for in whole or in part with Federal funds, or charged to a project supported by a Federal grant. DOE actions in such management and disposal will comply with the requirements therein, using this Order for implementation. Consideration should also be given to cooperative agreements covered by the DOE Assistance Rules, 10 CFR 600.117.
6. RELINQUISHMENT OF WITHDRAWALS. Relinquishments must comply with the procedures prescribed in 43 CFR 2372.1.

ANNUAL REVIEWS

1. Real Property Utilization Survey
2. Real Property Annual Review - Leased Facility

DEPARTMENT OF ENERGY
REAL PROPERTY UTILIZATION SURVEY
SEE FPMR 101-47.8-1 FOR STANDARDS FOR COMPLETING SURVEY

1. Responsible Office _____ 3. Location (City or County, State) _____
2. Facility Name _____
4. Acreage _____
5. Estimated fair market value (EFMV) of land owned: \$ _____
6. Acquired by: 6a. Purchase _ 6b. Donation _ 6c. Exchange _ 6d. Other(Describe) _
7. Purpose (use) of facility: _____
8. Improvements: 8a. Yes _ 8b. No _ 9. No. of Improvements: None _ 1-50 _ over 50 _
- 9a. Type of improvements with gross-square footage: _____
- 9b. EFMV of improvements: \$ _____ 10. Total EFMV: \$ _____
11. Use of site: 11a. Year round _ 11b. Periodic _ (Give dates): _____
12. Is site jointly used by others? 12a. Federal Agency _
utilized _ 12c. Not put to optimum use: _____
12b. State or Local Government _ 12c. Business or individual _ 12d. No. _
13. Explain outgrants (e.g., easements, licenses, permits): _____
14. Future plans for use of site: _____
15. Is property use compatible with surroundings? _____
16. Could operating and maintenance costs be reduced if site was relocated? _____
17. Will contemplated program changes alter property requirements? _____
18. Are buffer zones kept to a minimum? _____
19. Is Government-owned land essential to meet program requirements? _____
20. Is property being retained because it is considered undesirable
landlocked? _____
21. Is there land or space available for use by others on a temporary
basis? _____
22. Degree of utilization: Definitions on back of form. Check one box and use
remarks for further explanation. 22a. _ Fully utilized: 22b. _ Underutilized:
22c. _ Not utilized _ 22d. Not put to-optimum use: _____
23. Remarks: _____
24. Previous survey: 24a. _ Annual 24b. _ Executive Order 5 year 24c. _ GSA
24d. Date _____ 24e. Determination: _____
25. This site and/or improvements are recommended for: 25a. Retention _
25b. Partial excess _ 25c. Excess _
26. Surveyed by (Name, Title, and Date): _____
27. Reviewed by (Name, Title, and Date): _____

U.S. DEPARTMENT OF ENERGY
REAL PROPERTY ANNUAL REVIEW - LEASED FACILITY
(Definitions and Instructions Attached)

1. Responsible Office _____ 2. Lease (Lse) Type _____
3. Building (Bldg) Name _____ 4. Bldg Address _____
5. Lessor _____ 6. Lessee _____
7. Lse No. _____ 8. Original Occupancy Date _____
9. Beginning Date of Current Lse Term _____ 10. Lse Expiration Date _____
11. Current Annual Rent _____
12. Fully Serviced - Yes No _____ 13. Serv/Util (S/U) not included (ni) _____
14. cost - S/U ni _____
15. Renewal Terms _____ 16. Renewal Annual Rent _____
17. Renewal Notice _____
18. Lessee Cancellation Rights _____
19. Lessor Cancellation Rights _____
20. Bldg use _____
21. Square Feet: Lse Total _____ Office _____ Storage _____ Special _____
22. Parking Spaces _____ 23. Acreage (Land Lse Only) _____
24. Land Use (Land Lse Only) _____
- Yes No N/A
25. Will anticipated program changes alter space requirements? _____
26. Is all support space being efficiently utilized? _____
27. Can any future expansion needs be satisfied in this building? _____
28. Number of Occupying Personnel: Total _____ Office _____
29. Degree of Utilization: Check appropriate box and use remarks for further explanation or discussion: 29a. _____ Fully utilized: 29b. _____ Underutilized: 29c. _____ Not utilized: 29d. _____ Not put to optimum use:
30. The Lease for this building and/or land is recommended for: 30a. _____ Retention: 30b. _____ Renewal: 30c. _____ Cancellation:
31. Remarks: _____
32. _____
Annual Review by: (Name, Title and Date)
33. _____
Approved by: (Name, Title and Date)

DEFINITIONS:

Fully utilized: The property under lease is in full use and is essential for accomplishment of the agency mission. No portion of the property could be disposed of without detrimental effect on program accomplishment.

Underutilized: The property under lease is only partially used for program purposes. A definable portion of the leased property could be utilized by others or disposed of without detrimental effect on program accomplishment. Identify portion of leased property considered underutilized.

Not utilized: The property under lease is not in full use by the agency or use is so minimal that the property could be used by others or excessed. What action has been taken to excess or improve use of the property?

Not put to optimum use: The property under lease is utilized in some degree, but there are potential uses which would be of greater value in terms of program accomplishment, income from sale, etc.

INSTRUCTIONS: The following instructions explain what information is requested for various items on the Real Property Annual Review - Leased Facility.

Item No.	Information Required
1.	This item should identify either a DOE Field Office, technology center, power administration, etc.
2.	Identify what is being leased such as a building, parking, land, or a combination, etc.
4.	Here include street address, city and State.
6.	Identify the specific DOE or contractor office that executed the lease.
7.	Show the date DOE or the contractor initially occupied the leased building or assumed leasehold interest in a land lease.
9.	Identify the effective date of the lease term now in effect.
10.	Identify the expiration date of the lease term now in effect.
13.	Items here may include electricity, janitor services, water & sewer, etc.
14.	If the services and utilities, not included in the lease rental, are obtained under a subcontract the actual costs should be shown. If they are furnished by force account use the best estimated cost available.
15.	Identify the number of renewal terms and length of each in years.
16.	Identify if a specific renewal rate is reflected in the lease, if the current rental will continue with escalator adjustments in accordance with the lease terms or another method is used to determine the renewal rate.
17.	Show the date by which the renewal notice must be exercised.

18. Indicate if whole and/or partial cancellation is allowed, how much notice is required, and the date after which cancellation may be exercised.
19. The same as No. 18 above.
20. Identify by predominant use such as office, warehouse, laboratory, etc.
21. To the extent possible, identify the breakdown of space as listed.
26. Support space is that not continuously occupied by agency personnel such as conference rooms, libraries, file areas, etc., but is still as-built office type space.

CHAPTER III

APPRAISALS

1. REQUIREMENTS.

- a. For purposes of this Order, an appraisal is a written statement independently prepared by a qualified appraiser, which sets forth an opinion of the value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market, cost, and income information.
- b. Appraisals are prepared for the purposes of facilitating decision-making, as well as complying with various legal requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), and FPMRs.
- c. Appraised values most frequently requested and when required include:
 - (1) Fair market value - required in the acquisition and disposal of fee interest and permanent easement rights in real property;
 - (2) Fair rental value - required for inleasing and outleasing of real property; and
 - (3) Value for offsite removal - required where real property is acquired or disposed of without the underlying land and must be relocated from its present site.
- d. Fair market value is the price at which a willing seller would sell and a willing buyer would buy, neither being under undue or abnormal pressure. Implicit in this definition is an awareness by both the seller and buyer of the market forces, which affect value. The value estimated by the appraiser is based upon an analysis of the three approaches of similar properties in the area. A complete definition is included proceeding the Order.
- e. Fair rental value is the rent that space currently commands in a competitive market under specific lease terms and conditions. The appraiser must be given the solicitation, if applicable, a copy of the proposed lease terms and conditions, but not the proposed rent, and architectural and layout drawings when available, so that the property can be appraised on the exact terms and conditions proposed. Additionally, the appraiser must be instructed to separately estimate base rent, the value of any utilities or

services included in the proposed lease, and the value of any other items that are part of the rent such as taxes, insurance, maintenance, space buildout, etc.

- f. The contract rent should not exceed the fair rental value estimated by the appraiser, and justification for approving rent in excess of the appraised fair rental value must be documented in the file. (See page I-29, paragraph 7g(12)).
- g. The requirement to obtain the appraised value for offsite removal is applicable to buildings, structures, and related machinery and equipment, which DOE has an obligation to remove from the site. The value is set by establishing whether the property has value offsite and, if not, by estimating the costs to dismantle, demolish, or remove the property and restore the site and is normally obtained as a written estimate from a salvage contractor. This cost may be partially or completely offset by any salvage value in arriving at the value for offsite removal.

2. SELECTION OF APPRAISERS.

- a. Only qualified appraisers shall be selected to prepare appraisals for DOE. Those selected should have successfully completed appraisal courses sponsored by nationally recognized appraisal organizations and have prepared similar appraisals for other Federal or State agencies. Appraisers who have received a professional designation from the Appraisal Institute are generally acceptable. Specialists should be assigned to appraise unique or complex property involving special machinery, equipment, mineral deposits, or timber.
- b. Procurement of appraisal services may usually be accomplished through utilizing the Corps of Engineers (USACE) under the existing DOE-USACE memorandum of understanding. Alternately, the DOE field element may obtain appraisal services through informal solicitation. Appraisers may be contacted by telephone to determine qualifications, appraiser interest, ability to complete the appraisal when needed, and estimated fee. Not less than three qualified appraisers should be requested to submit a letter outlining their understanding of the assignment, level of work anticipated, contract due date, fee, and qualifications. Estimated appraisal fees in excess of \$10,000 must be procured under formal procurement procedures.
- c. Appraisal documentation must be consistent with the "Uniform Appraisal Standards for Federal Land Acquisition", of 1973 and professional standards of nationally recognized appraisal organizations. The data and analysis prepared by the appraiser should explain, substantiate, and document the value appraised.

- d. The appraisal must be reviewed and approved before authorizing expenditure of Federal funds for the planned real estate action and payment of the appraisal fee. Persons reviewing the appraisal should have a fundamental knowledge of appraisal principles and techniques. Certified realty specialists have established thresholds for approving appraisals. However, if the appraisal exceeds those thresholds or if the complexity of the appraisal warrants, efforts should be made to obtain appraisal review services from other agencies; obtain a fee review appraiser; or request review by the Headquarters Real Property Branch staff.
- e. All acquisitions of real property from private owners shall comply with the policies set forth in Public Law 91-646 (84 Stat. 1894), Title III. In general, Title III requires that every effort be made to acquire the property amicably and to provide disclosure of essential information necessary for the owner to evaluate the reasonableness of DOE'S offer, and it forbids any coercive action to bring settlement. Procedurally, the Act requires that:
 - (1) Real property be appraised before beginning negotiations;
 - (2) The owner be provided an opportunity to accompany the appraiser on an inspection of the property;
 - (3) The Agency offer just compensation, which cannot be less than the Agency's approved appraisal;
 - (4) The owner be provided an offer letter setting forth the amount of just compensation and separately stating any loss in value to the remainder;
 - (5) In the case of condemnation, deposit in court an amount not less than the approved appraisal of fair market value; and
 - (6) The Agency offer to acquire any unusable remaining tract (uneconomic remnant).
- f. In summary, appraisals must be obtained to document and support the expenditures of Federal funds. The appraisals must be independently prepared and meet specific legal requirements; in other words, appraisals obtained by property owners or for loan or insurance purposes are not acceptable. Therefore, it is essential that appraisals be prepared by qualified appraisers and meet minimum documentation standards and that they be reviewed and approved prior to authorizing real property actions supported by Federal funds.

CHAPTER IV

CONDEMNATION

1. ACQUISITION CONDEMNATION. It is DOE policy to acquire authorized real property interests in land and/or improvements by direct purchase, at a just and reasonable negotiated price. However, in certain circumstances it will be necessary to initiate condemnation proceedings. Condemnation occurs when the Government exercises its right of eminent domain to take property for public use. Under the Constitution, a person cannot have his or her property taken for public use without due process of law and without just compensation. The Attorney General, upon request by DOE, will institute condemnation proceedings and prosecute the proceedings to completion.
2. NEED FOR CONDEMNATION PROCEEDINGS. Such action may be undertaken when:
 - a. There are title defects, which preclude acquisition by voluntary conveyance;
 - b. Multiple ownership is involved and an agreement to purchase cannot be obtained;
 - c. The property owner refuses to negotiate or sell at a just and reasonable price;
 - d. Immediate possession of the property by the Government is essential, and there is insufficient time for negotiations or to obtain an offer to sell;
 - e. The property owners cannot be located; or
 - f. When a member of Congress or an employee of DOE or its agent has a direct interest in real property being acquired by DOE.
3. AUTHORITY. Unless otherwise delegated, recommendations for condemnation actions will be approved by the Office of Counsel of the appropriate field element and will be submitted to the Chief, Real Property Branch, for review. A "Complaint in Condemnation" and "Declaration of Taking" filed in conjunction with it will contain a citation of the congressional authorization and appropriations acts for the particular project and any other applicable acts of Congress. Unless specifically delegated otherwise, the Secretary or the Under Secretary must approve condemnation actions.

4. PROCEDURES.

- a. Condemnation Assembly. The request to condemn shall include an assembly of information, and one copy, incorporating the items, information, and certifications required by the Department of Justice in "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies," Chapter I, "Acquisition by Condemnation Proceeding." (This document is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 027-000-00150-5.) Include one additional copy of all items for the assembly.
- b. Notice to Owners and Tenants. When a decision is made to recommend condemnation, a notice will be sent to the affected property owners and tenants so advising. If the reason for condemnation is disagreement over value of the property to be acquired, a period of time for acceptance will be indicated, and a statement will be included that if the offer is not accepted, the field element intends to recommend condemnation of the property to Headquarters.
- c. Order of Possession. Upon filing of a "Declaration of Taking," the court is authorized to establish the time and the terms on which the property owners shall surrender possession to the Government. The letter of transmittal to the Attorney General will give the date by which the Government desires possession of the property. Based on this letter, the Department of Justice will have the U.S. Attorney obtain an appropriate Order of Possession or right-of-entry based on the needs involved.
- d. Condemnation with Agreements to Purchase. If parcels on which there are agreements for purchase are contained in the condemnation proceedings to cure title defects or other reasons, the U.S. Attorney will be notified of this fact, and a signed copy of the agreement shall be provided to him or her.
- e. Deposit of Funds. The appropriate DOE finance office will provide a check for the estimated just compensation to the U.S. Attorney for deposit in the Registry of the Court at the time of filing.
- f. Interim Occupancy. When property owners or tenants are allowed to remain on the property, the conditions and terms under which such persons will remain on the property will be stated in a lease agreement.
- g. Actions Following Filing of Declaration of Taking. When notified that a "Declaration of Taking" has been filed, the following actions must be undertaken by the field organization acquiring the property:

- (1) Post the property indicating it is now Government property (this only applies once an Order of Possession has been signed by the court);
 - (2) The property should be inspected and a Certificate of Inspection and Possession completed and retained in the file.
 - (3) Update the title evidence as of the date of recordation of the "Declaration of Taking"; and
 - (4) Have appraisals updated to the date of taking.
- h. Settlement. At the direction of the U.S. Attorney, an authorized representative of DOE may conduct discussions for offers of settlement with the property owners as to the amount of compensation to be paid for the property. Upon reaching a satisfactory agreement as to price, a stipulation, approved by the U.S. Attorney, may be executed.
- i. Court Awards. If the court awards an amount in excess of the amount deposited by DOE in the Registry of the Court, the U.S. Attorney will notify DOE and request that a check for the deficient amount be sent to the U.S. Attorney for deposit in the Registry of the Court.
- j. Appeals. If the court award seems unreasonable and the U.S. Attorney determines that the facts warrant an appeal or a motion for a new trial, the U.S. Attorney may request DOE views and recommendations on the case. If DOE considers the award to be unreasonable, it should present its reasons to the Department of Justice and request consideration of an appeal.
- k. Record Disposition. Certified copies of the final judgment and opinions of the Attorney General are to be retained in the real property files at the installation as part of the permanent DOE property records.

CHAPTER V

MANAGEMENT OF NATURAL RESOURCES

1. FORESTRY MANAGEMENT. When DOE-controlled land contains areas suitable for the conservation and management of forest resources, a forest management program will be established. This program will include forest administration, timber management, timber sales and harvesting, reforestation, forest protection, and all other elements related to timber production. On land withdrawn from the public domain, DOE should coordinate with the Bureau of Land Management.
2. SOIL AND WATER CONSERVATION.
 - a. To assure that maximum benefits are derived from existing natural resources and to prevent needless expenditure of funds for the preservation of these resources, a soil, water, and plant conservation plan shall be developed and maintained by the field elements, and funds should be made available for the execution of the plan. The plan must be in accordance with current conservation and land-use practices, include proposed changes in land use and drainage patterns, and outline all soil and water conservation problems and requirements. In addition, the conservation plan should contain:
 - (1) Brief description of land and water areas;
 - (2) DOE use requirements;
 - (3) Pertinent soil, climate, or erosion conditions;
 - (4) Technical guidance criteria for recurring actions required to economically preserve, improve, or sustain the area; and
 - (5) Any special problems in connection with the conservation of these resources.
 - b. A copy of the soil and water conservation plan will be kept on file in the appropriate field elements for review and appropriate action.
3. FISH AND WILDLIFE MANAGEMENT. All installations having suitable land and water areas will have programs for the harvesting of fish and wildlife by the public. Hunting, fishing, and trapping will be in accordance with the fish and game laws of the State. Appropriate State licenses are required. Provisions will be made for controlled public access to DOE property for hunting, fishing, and trapping, provided it does not interfere with missions. Fish and wildlife management will be

integrated with other natural resources activities. Cooperation with State and Federal fish and conservation agencies is required, pursuant to 16 U.S.C. 661, 470, 1536, 703, 1431, and 668; 42 U.S.C. 4331; 7 U.S.C. 136; and 33 U.S.C. 1401. A management program that complies with accepted scientific practices will be established.

4. CULTURAL RESOURCE MANAGEMENT. Prior to outgranting any interest in DOE controlled real property, field elements must comply with the requirements and intent of Section 106 of the National Historic Preservation Act. In managing cultural resources, field elements should be further guided by the Archaeological Resources Protection Act and American Indians Religious Freedom Act.
5. NATIONAL ENVIRONMENTAL RESEARCH PARKS. Suitable DOE-owned or -leased land may be designated as a national environmental research park. Property holdings will be reviewed periodically and may be set aside for the exclusive use of nonmanipulative environmental research for definite or indefinite periods of time.

CHAPTER VI
ADMINISTRATION

1. REAL ESTATE INVENTORY AND RECORDS. PSOs or designees have the responsibility to maintain all records of real estate assets and appropriate backup data. Cadastral records are records pertaining to land, interests therein, or rights thereto, of the United States under DOE control, and will contain the originals or an executed copy of all real estate instruments with maps and backup data. When responsibility for a contract is transferred from one DOE organization to another, inventory and pertinent property records for all real property and related personal property should accompany the contract.
2. AUTHORITY.
 - a. Title 44 U.S.C. 31, Records Management by Federal Agencies.
 - b. Title 41 CFR Part 101, Federal Property Management Regulations.
 - c. DOE 1324.2A, RECORDS DISPOSITION, of 9-13-88.
 - d. DOE 1324.3, FILES MANAGEMENT, of 3-2-81.
 - e. DOE 1324.4, MICROGRAPHICS MANAGEMENT, of 11-2-83.
 - f. DOE 5500.7B, EMERGENCY OPERATING RECORDS PROTECTION PROGRAM, of 10-23-91.
3. CREATION OF RECORDS/FILES. Two separate and distinct sets of records: permanent cadastral records and operations/working files.
 - a. Cadastral Records.
 - (1) Cadastral records shall be created containing original or, if not available, duplicate originals of all muniments of all land holdings within the administrative control of the field element for the following types of interests:
 - (a) Fee acquisition;
 - (b) Withdrawal from the public domain;
 - (c) Permanent easements;
 - (d) Permanent full/partial disposals;
 - (e) Jurisdiction; outgrants, ingrants; and

- (f) Other items, which are of such significance as to be deemed worthy of retention by the field element.
- (2) A library of microfilm of everything in the cadastral records must be maintained in accordance with DOE 1324.2A and 1324.4.
- (3) Cadastral records shall be contained in files that are clearly labeled and sequentially organized by facility and type of action so as to present a logical, chronological chain of events in accordance with DOE 1324.3. The following Order is recommended:
 - (a) Acquisition.
 - 1 Fee simple.
 - 2 Withdrawal from the public domain.
 - 3 Easements (one easement to a file).
 - (b) Disposal.
 - 1 Disposals.
 - 2 Partial disposals (one action to a file).
 - 3 Disposal of lesser interests (outgrants, termination of temporary rights).
 - (c) Jurisdiction (if appropriate).
 - (d) Other (if appropriate).
- (4) To ensure uniformity of recordkeeping throughout DOE, the following muniments shall be kept in the cadastral files:
 - (a) Permanent Acquisition of Fee or Easements.
 - 1 By Purchase or Donation. The final opinion of title together with all related title papers including the approved appraisal, purchase agreement, certificate of inspection and possession, certificate of noninterference, negotiator's report, deed, closing instructions, survey (metes and bounds or legal description), map or drawing, and the certificate of title or title insurance policy.

- 2 By Condemnation. Secretarial request to Attorney General for institution of condemnation. Complaint in Condemnation, Declaration of Taking, Attorney General's confirmation opinion of title with related documents attached, order of possession, Secretary's request for amendments to the proceeding (if any), Attorney General's opinion on amendments with all documents attached, final opinion on each parcel in the proceeding with all attachments, and the appropriate items as defined for purchase or donation.
 - 3 By Reassignment from another DOE Component. Letter of approval, letter of reassignment, and all muniments.
 - 4 By Transfer from another Federal Agency. DOE request for transfer of land or interests affecting land (SF-1334, if applicable), Agency official transfer letter, or memorandum with all muniments and related papers.
 - 5 By Withdrawal from the Public Domain. Application to the Department of the Interior for permanent or long-term withdrawal of public domain land for use of DOE with description and map (if any), and copy of the Public Land Order or other document withdrawing the land.
- (b) Partial Disposals. Letters to GSA with Report of Excess (SF-118, 118a, 118b, and 118c) and Report of Title, approvals, if any, letters of transfer to other Federal Agencies, quitclaim deeds, easements of indefinite term, and letters of donation.
- (c) Full Disposals. Letters to GSA with Report of Excess (SF-118, 118a, 118b, and 118c) and any document indicating final disposition of the property.
- (d) Reassignment to another DOE Component. Only the reassignment letter should be kept by the transferring DOE component. All other records should be transferred to the acquiring office.
- (e) Legislative Jurisdiction. Letter of application to State governors specifying the need for Federal jurisdiction and/or letters to State governors accepting jurisdiction; deeds of cession by the State and/or other documentary evidence of cession and acceptance of jurisdiction by the Federal Government; and documentary

evidence of modification and retrocession. Any other type of jurisdiction shall be so noted in the acquisition file.

- b. Operations/Working files. Operations/working files should be created to document the conduct of current business. These files should also be clearly labeled and sequentially organized by installation and type of action in a manner similar to the system used for cadastral records in accordance with DOE 1324.3.

4. MAINTENANCE AND USE OF RECORDS/FILES.

- a. All cadastral and operations/working files shall be maintained to accurately reflect the current status of any given action.
- b. The cadastral records shall be updated with completed actions otherwise required in the files. Cadastral records shall be monitored to assure accuracy of information.
- c. Files should be examined to assure that there is no extraneous information in the file.
- d. Operations/working files should be used to track an ongoing action and those actions not of a permanent nature.
- e. Once an action is completed and qualifies for storage as a cadastral record, all original muniments shall be removed from the operations/working file, microfilmed, and placed in proper sequence in the cadastral records. Nonpermanent actions, when completed, should remain in the operations/working file and need not be microfilmed.
- f. Any information stored in the cadastral or operations/working files shall be preserved in such a manner as to prevent loss or destruction in accordance with DOE 1324.3 and 5500.7B. In some cases, these files may be the only records available that document the Government's legal rights. In any event, assuming a deed or lease has been recorded elsewhere, these files serve as a backup and have the advantage of being easily and readily accessible when required.

5. DISPOSAL OF RECORDS/FILES.

- a. Records shall be stored, subsequently disposed of, and retention schedules established in accordance with existing DOE 1324.2A.
- b. The originals of all title papers shall be retained by the field elements until such time as the property is reported excess to GSA, is transferred to another Federal Agency, or disposed of in some

other manner consistent with the Federal Property Management Regulations and DOE policy.

- c. Disposals through GSA. Original muniments shall be assembled and forwarded to GSA with the Report of Excess. Original muniments of title should also accompany a direct transfer to another Federal Agency. In the event of a partial disposal, the original muniments of title shall be retained by the field element if the greater portion of the facility is also to be retained.
- d. Disposals by DOE.
 - (1) To another Federal Agency. Original muniments shall accompany transfers to other Federal Agencies. In the event of a partial disposal, the guidance outlined in paragraph c above shall be followed.
 - (2) To a Non-Federal Entity. No title documents need to be furnished if the disposal, or partial disposal, is to a non-Federal entity.
- e. Inventory. A survey of all real property is required annually by 41 CFR 101-47.2 to determine whether all Government property is needed and optimally utilized. In addition, DOE 2200.6, FINANCIAL ACCOUNTING, CHAPTER VI, "Plant and Capital Equipment," at page VI-33, paragraph 5b, provides guidance that physical inventories of real property are to be taken at least every 10 years. All surveys and inventories must be made by DOE personnel or authorized contractor personnel. Personnel who perform the physical inventory shall not be the same as those who maintain the property records or have custody of the property. Inventories must be signed and certified correct. Copies of each inventory shall be available in the field element office for review by the Controller and the Office of Organization, Resources and Facilities Management.
- f. DOE personnel who are responsible for a real property inventory shall submit to the manager of the field element having jurisdiction a listing of all discrepancies disclosed by a physical inventory, a signed statement that the inventory was completed, and a statement that the property records and the inventory agree except for the discrepancies reported. Inventory summaries shall be prepared showing cost by asset type so that dollar totals can be correlated to financial control accounts. The Head of the Field Element, the Property Administrator, and the Finance Director shall investigate all significant discrepancies, determine the causes, and effect remedial measures.

6. REAL PROPERTY REPORTS.

- a. Annual real property reports will be prepared for Tree Planting, Vending Stand Operations, and the Worldwide Real Property Inventory Reporting System, as described in Attachment VI-1, "Annual Real Property Reports Requirements." Reports should be transmitted to the Chief, Real Property Branch, by the dates shown. Negative reports are required and may be made by telephone to the Chief, Real Property Branch.
- b. Reports required by GSA will be prepared and submitted by the Office of Organization, Resources and Facilities Management, using inventory information.
- c. Additions, changes, or deletions to the automated system should be completed prior to the end of each quarter.
- d. DOE F 4300.3, "Semi-annual Summary Report of DOE-owned Plant and Capital Equipment," is required to be completed by offsite, nonintegrated contractors as of February 28 and August 31 of each year, and as of the final date of the contract. The original and two copies of the report shall be sent to the Property Administrator, who in turn will provide copies to the Contracting Officer and to the Servicing Financial Organization.

ANNUAL REAL PROPERTY REPORTS REQUIREMENTS

<u>REPORT TITLE/FORM OF REPORTING</u>	<u>DUE DATE</u>	<u>AUTHORITY</u>	<u>NO. OF COPIES TO BE SUBMITTED</u>
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Department of Agriculture

Annual Tree Planting and Seed- ing Report (1450-DOA-AN)	11-30	Forest Service Manual 3215	Original and one copy
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Memorandum report of number of
acres planted with tree
seedlings or directly seeded
with trees during fiscal year.
Do not report species,
grasses, planting, or seeding
done for landscaping purposes.

Department of Education

Vending Facility Activity under the Randolph-Sheppard Act (1270-ED-AN)	2-15	Randolph- Sheppard Act, 20 U. S. C. 107	Original and one copy
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Memorandum report noting, in order by State:

1. Total number of vending concessions or facilities established:
record total number of Randolph-Sheppard Act (R-S) facilities by
type and status at end of fiscal year.
 - (a) Number of cafeterias: record R-S cafeteria facilities in
fiscal year.
 - (b) Number of snack bars: record R-S snack bar facilities in
fiscal year.
 - (c) Number of sundry or dry: record R-S sundry or dry
facilities in fiscal year.
 - (d) Number of vending machines: record R-S vending machine
facilities or locations in fiscal year.
2. Total number of prospective sites surveyed with State Licensing
Agency in fiscal year: record R-S sites surveyed on controlled
property (food and other concessions) in fiscal year.

3. Total number of feasible sites identified for future development: record total number feasible sites for future development in existing and new (construction) buildings.
4. Total estimated number of non-R-S facilities or concessions in item 1 above, if available: record total number non-R-S concessionaires on property controlled by the Federal Property Managing Agencies (i.e., private/commercial contractors).
5. Total amount of vending machine income collected and processed by DOE.
6. Dollar amount of vending machine income disbursed to the State Licensing Agency in each State.

General Services Administration

Worldwide Real Property Inventory
Reporting System (0315-GSA-Q4)

Annually FPMR
101-3.204
(a)

Prepared by the
Office of
Organization,
Resources and
Facilities
Management
using RPI S2

CHAPTER VII

REAL PROPERTY INVENTORY SYSTEM 2

1. APPLICABILITY. The following must be included in the Real Property Inventory System 2:
 - a. All real property owned or controlled by DOE. This includes land owned in fee, easements, leases, withdrawals from the public domain, and transfers from other Government agencies. It also includes licenses and permits if:
 - (1) The license or permit, in fact, conveys a leasehold interest to DOE, such as a permit from another Federal agency; or
 - (2) The DOE constructs improvements on the land occupied by permit or license, that is, adds structure or buildings, or significant changes to the property itself.
 - b. Contractor real property transactions, including leases, which are subject to the requirements of this Order, or which result in the acquisition or construction of Department-owned property.
2. USER'S REFERENCE MANUAL. The User's Reference Manual is compiled and distributed by the Director, Office of Information Resources Management, and contains detailed information on procedures for data entry and system operation. Copies can be obtained by requesting them in writing from the Chief, Real Property Branch.
3. DATA ENTRY GUIDELINES. Only changes to the data base must be reported or updated. The following guidelines detail when actions must be reported:
 - a. Land (Fee or Easement).
 - (1) When the deed is recorded, if it is a voluntary sale;
 - (2) When the Declaration of Taking is filed, if it is an action of condemnation; and
 - (3) If condemned without filing a Declaration of Taking, when the final judgment is issued.
 - b. Transfers from Other Agencies. On the effective date of the transfer, usually found in the letter from GSA transferring accountability.

- c. Withdrawals from the Public Domain. On the effective date of the public land order (usually the date published).
- d. Acquisition of Leasehold Interests, Permits, Licenses, and Other Similar Actions. When executed.
- e. Improvements to Land. New buildings, other structures or facilities, capital improvements to existing improvements, modifications of structures, and facilities or buildings shall be reported within 30 days of beneficial occupancy by the Government. Normally, the requirement is fulfilled when those responsible for construction forward a construction completion report to the field elements responsible for the inventory and to those responsible for the Financial Information System. Recommended contents of a construction completion report are contained in the detailed policies and procedures for management of construction projects. The exact-procedures may vary at different field elements where other techniques besides the construction completion report are utilized to report real property.

4. DELETIONS.

- a. Disposals of Fee Simple Title Interests. Property is deleted from the inventory when title is conveyed to another party or accountability is transferred to another Government agency. Property reported as excess to GSA is reported in the inventory until final disposition is made by GSA.
- b. Disposals of Easements. Property interests are deleted from the inventory when sold or transferred to another Government agency or party, or when the instrument expires or is terminated. Leases assigned to another party, whereby the assignee becomes liable for all future costs and obligations under the lease, are deleted from the inventory upon the effective date of the assignment.
- c. Abandonments. Property is deleted from the inventory on date of contract closeout.
- d. Demolitions. If part of a new construction contract, demolitions will be reported at the time the new construction is reported. If only demolition is involved, the report is to be made within 30 days of acceptance by the Government or within 30 days of the time the improvements are removed physically from the site (if sold for offsite removal).

5. EXCEPTIONS. During the period from 10-1 through 10-31 of each fiscal year, only entries from actions completed prior to 10-1 will be permitted. This is necessary to allow for yearend closeout and reconciliation with the Financial Information System.

CHAPTER VIII

SPACE UTILIZATION AND REPORTING

1. UTILIZATION.

- a. DOE and DOE contractor controlled space shall be utilized as efficiently as possible. Storage and special types of space will be managed to assure optimum utilization. Office space will be managed in accordance with FPMR, Temporary Regulation D-73 (FPMR, TR D-73) or 41 CFR Part 101-17 when it is published as the Final Rule in the Federal Register. This space management policy applies to the categories of space as listed below:
 - (1) Space owned and leased by DOE; and
 - (2) Space leased by DOE contractors where the contractor is subject to this Order (see page I-22, paragraph 7c(4)).
- b. Space assigned to DOE and DOE contractors by GSA must comply with FPMR, TR D-73, and is subject to GSA utilization surveys conducted to assure compliance. GSA will not take action on space requests that are not in compliance unless they are fully justified.

2. REPORTING.

- a. Space owned and leased by DOE, and space assigned to DOE by GSA, must be reported annually to GSA and the Office of Management and Budget on GSA Form 3530, "Work Space Management Plan and Budget Justification (WSMP & BJ)."
- b. Section 101-17.007 of FPMR, TR D-73, discusses the requirements for preparing and submitting the report. GSA Form 3530 and instructions for preparing the report are included in the FPMR, TR D-73, Section 101-17.4902-3530.
- c. Headquarters will annually submit a call to the DOE field elements for the necessary information. The field element data are required in Headquarters by the last workday in March each year.
- d. FPMR, TR D-73, Section 101-17.007(g) requires the update of the WSMP & BJ for the current year to reflect final budget decisions prior to March 1 each year. Field elements, where reportable changes occur, must submit their changes to the Chief, Real Property Branch, by February 1 each year. No field call for this information will be made by Headquarters.

3. NEW CONSTRUCTION REVIEWS. For new construction projects the following reviews are to be conducted by the field element real estate staff:
 - a. The site plans for all new construction; and
 - b. The Titles I and II drawings for all new construction projects that include office space.

CHAPTER IX

DELEGATIONS OF AUTHORITY

1. BACKGROUND.

- a. Education and training programs to further staff development and increase professionalism in the Department were outlined in Secretary of Energy (SEN), SEN 11-89, SETTING THE NEW DOE COURSE, of 9-15-89. To further this important goal, to assure that properly trained, adequately experienced personnel are available to review real estate actions for the Department, and to establish clear lines of authority for real estate actions, a Real Estate Certification Program is hereby established. With the effective date of this Order, the delegations to the DOE Field Office Managers and the Administrators of the Power Marketing Administrations, which were contained in DOE 4300.1B, REAL PROPERTY AND SITE DEVELOPMENT PLANNING, of 7-1-87, are canceled. Future delegations for real property transactions will be through the certification program or by direct delegations as described in this Chapter.
- b. This change applies only to the generic delegations for real estate transactions in DOE 4300.1C. Any specific written delegations issued prior to the effective date of this Order, including the delegations of authority to approve title from the Department of Justice and the delegations for specific leasing or lease management actions from the Administrator of the General Services Administration, remain in full force and effect until they either expire by their own terms or are specifically withdrawn in writing.
- c. In no case is this program designed to eliminate line management responsibility for facility-related decisions. Rather, it is intended to further assure that there is a clear understanding of who has the experience and training in a field element to provide the required real estate input to the decisionmaking process, and to assure that once the management decision has been made, that it is carried out in a manner that meets requirements of Federal real estate law, regulations, and good business practices. By formally recognizing who are the trained, accountable real property representatives of each office, it will assure that necessary real estate input is included in decisions.

2. AUTHORIZING OFFICIALS WITHIN HEADQUARTERS. The authority of the Secretary of Energy to take real estate actions, as the same are defined in this Order, is redelegated to selected positions in Attachment IX-1, Authority Levels in Headquarters of this Order. Those positions listed in Attachment IX-1, may redelegate their authority, in writing, to any Federal employee of the Department for a specific transaction, or group

of transactions, provided that they find in advance that such redelegation is necessary for the successful conduct of Departmental programs, that the Real Estate Certification Program described in this Chapter is not adequate for accomplishing programmatic purposes, and provided that such findings are reduced to writing and concurred in by one higher level of authority.

3. DELEGATIONS THROUGH THE CERTIFICATION PROGRAM.

a. Except as noted above, redelegations to program officials in Headquarters or to field elements will be through the Real Estate Certification Program established in this Chapter. The Chief, Real Property Branch, will issue certificates to qualified individuals in four distinct areas of specialty: 1 Acquisition by other than lease (Acquisition), 2 Leasing except for leases executed under the delegation of lease acquisition authority from GSA (Non-GSA Leasing), 3 Leasing under the delegation from GSA (GSA Leasing), and 4 Land Management and Disposal.

b. To qualify for redelegation from the Chief, Real Property Branch, an individual must meet the experience and education criteria established in this Chapter.

(1) Experience. A minimum of 5 years of creditable experience in the real estate field, at least 1 year of which is at the journeyman level in the specialty area of delegation. Journeyman level leasing experience will be credited in both the GSA leasing and non-GSA leasing specialty, so that only 1 year of journeyman level experience is necessary for certification in both specialties. Experience may be in the public or the private sector. Experience as a GS 1170 Realty Specialist or GS 1171 Appraiser will count as full credit toward the experience requirement. Other experience will be evaluated for its application to the realty specialist field and credited on a full or partial basis as determined by the Chief, Real Property Branch.

(2) Education. Education may be substituted for experience. One hundred sixty classroom hours of approved classes will be the equivalent of 1 year of journeyman level experience. A list of courses will be maintained by the Real Property Branch and furnished to all field elements. These courses will be credited toward fulfillment of experience in appropriate specialty areas. The courses will be annotated to indicate the type of experience they will be credited toward; e.g., acquisition, leasing, or land management and disposal. Courses may be nominated for the list by submission to the Chief, Real Property Branch. Adequate information about the

course should be furnished to the Chief, Real Property Branch, who will determine the appropriate credit and appropriate specialty area for the class. Maximum credit for any one course will be 40 classroom hours.

4. CERTIFICATION PROCESS.

- a. Issuance. Certificates will be issued to Federal employees of the Department meeting the qualification requirements in any or all of the four specialty areas of real estate activity after review of a request for such certification from the appropriate organization. While the delegation is designed to meet field requirements for real property actions, delegations may also be requested from Headquarters employees meeting the requirements and having the demonstrated need for the delegation. Requests should include adequate information on training and experience to permit review and evaluation. Employees so certified may authorize or contract for real estate actions within that specialty and within the limits of the delegations established in this Chapter. Such authority may be redelegate, in whole or in part, by the certificate holder to other Federal DOE employees, provided that the redelegation is to a person who meets the qualification requirements of this Order. Redelegation to non-DOE employees can only be done with the approval of the Chief, Real Property Branch. In no case may a certificate holder redelegate to individuals outside his chain of command (i.e., the delegator's office must have line management responsibility for the office in which the delegatee is working). The qualification requirement of this Chapter can only be waived by the Chief, Real Property Branch, by the other Headquarters officials listed in Attachment IX-1, or by the Secretary of Energy.
- b. Term. Certificates will be issued for 5-year terms and will require review and recertification at the end of the term. Certificates will automatically terminate upon the resignation, retirement, or transfer of the Certificate Holder to another office that has no organizational responsibility for real estate. In addition, the Chief, Real Property Branch can withdraw certification at any time for cause. Certificates will be issued to individuals, not positions.

5. AUTHORITY LEVELS FOR CERTIFIED REALTY SPECIALISTS. Subject to full compliance with the requirements of this Order and policy directives issued pursuant hereto, individuals certified in the appropriate specialty area are authorized to contract for or approve the following real estate actions:

a. Acqui si ti on.

- (1) Fee, except donations and exchanges: per tract price not to exceed \$500,000 and the price not to exceed 115 percent of the approved appraised value of the property (i.e., not more than 15 percent above).
- (2) Permanent Easements: per tract price not to exceed \$500,000 and the price not to exceed 115 percent of the approved appraised value of the property.
- (3) Temporary Easements: per tract price not to exceed \$500,000 for the term, the term not to exceed 20 years, and the price not to exceed 115 percent of the approved appraised value of the property.
- (4) Exchanges: The higher value property (acquired or disposed of) not to exceed \$500,000.
- (5) Transfers from other Federal Agencies: Unlimited authority.
- (6) Withdrawals from the Public Domain: Unlimited authority.
- (7) Permits and Licenses: Unlimited authority.
- (8) Settlements after condemnation proceedings are instituted: per tract settlement not to exceed \$500,000.
- (9) Approval of Appraisals: While reviews from qualified review appraisers may be obtained for any appraisal, personnel certified for acquisition may approve appraisals that do not exceed the following thresholds:
 - (a) Fee and Permanent Easements: Value estimates of \$50,000 or less.
 - (b) Temporary Easements: Value estimates of \$50,000 or less for the term.
 - (c) Exchanges: Value estimates of \$50,000 or less.
 - (d) Permits and Licenses: Value Estimates of \$50,000 or less for the term.
- (10) Approval of Preliminary Real Estate Plans: All plans except those which are part of a Major System Acquisition or a Major Project.

b. Non-GSA Leasing.

- (1) GSA Space Requests (SF-81 and related data): Unlimited authority, if space request meets GSA space requirement guidelines. Otherwise, it must be submitted to Headquarters for approval.
- (2) Contractor and DOE-Leases: Price not to exceed \$500,000 per annum, lease term not to exceed 5-years firm, and price not to exceed 115 percent of the appraised fair rental value for the space.
- (3) Lease Options: Price not to exceed \$500,000 per annum, lease term not to exceed 5-years firm, and price not to exceed 115 percent of the appraised fair rental value.
- (4) Approval of Appraisals: While reviews from qualified review appraisers may be obtained for any appraisal, personnel certified for GSA or Non-GSA Leasing may approve leasehold appraisals that do not exceed \$500,000 per annum.

c. GSA Leasing. Same authorities as acquisition by lease. The reason for a separate delegation for GSA leasing is that the delegation from GSA requires that all redelegation be to realty specialists meeting the specific training requirements of the GSA Acquisition Regulation. Those training courses required at this time will be annotated on the listing of courses maintained by the Real Property Branch.

d. Land Management and Disposal.

- (1) Disposal of fee and permanent easements where GSA is the disposal agent: Unlimited authority.
- (2) Disposal of fee and permanent easements where DOE is the disposal agent: Original acquisition cost, or fair market value, whichever is greater, not to exceed \$500,000.
- (3) Temporary outgrants (licenses, permits, outleases, easements for a term): Unlimited authority.
- (4) Approval of 12512 Utilization Surveys: Unlimited authority.
- (5) Annexation Decisions: Unlimited authority.
- (6) Legislative Jurisdiction: Unlimited authority.

(7) Approval of Appraisals: While reviews from qualified review appraisers may be obtained for any appraisal, personnel certified for land management and disposal may approve appraisals in the land management and disposal area that do not exceed the field delegation threshold.

(8) Relinquishment of Withdrawals: Unlimited authority.

6. AUTHORITIES RETAINED IN HEADQUARTERS. In addition to actions exceeding the certification level established in this Chapter, there is retained at Headquarters the following authorities:

- a. Approval of all donations to DOE.
- b. Signature authority for Declarations of Taking.
- c. Submission of lease prospectuses to Congress or to GSA for submission to Congress.
- d. Approval to make permanent improvements to non-Government land.
- e. Use of section 161g of the Atomic Energy Act for sale or outleasing of property.
- f. Determinations of real versus personal property for modular buildings outside the guidelines of this Order.
- g. Determinations to vest title pursuant to Section 111 (b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5821 (b)).

7. HEADQUARTERS REVIEW. Real estate actions requiring Headquarters approval shall be submitted to the Chief, Real Property Branch, a minimum of 45 days prior to the field element's required action date.

AUTHORITY LEVELS IN HEADQUARTERS

The Chief, Real Property Branch, Real Property and Facilities Management Division, Office of Project and Facilities Management, is delegated authority to authorize actions or sign real estate contracts subject to the following limitations:

Fee and Easement Acquisition: per tract price not to exceed \$1 million.

Exchanges: The higher value property (acquired or disposed of) not to exceed \$1 million.

Approval of Standard Form 81's where GSA guidelines for space requirements are exceeded.

Leases where the per annum rent does not exceed \$1 million, except for leases executed pursuant to the lease acquisition delegation from GSA. Authority in Headquarters for GSA-delegated leasing is by separate letter delegation.

Prospectuses for submission to Congress or to GSA.

Disposal of fee or permanent easement interest where DOE is the disposal agent: original acquisition cost or estimated fair market value not to exceed \$1 million.

Approval of improvements to non-Government-owned land: estimated cost of the improvements not to exceed \$1 million.

Determinations of real versus personal property for modular buildings outside the guidelines of this Order. Note that this also must be approved by the Director of Property and Equipment Management.

Approval of appraisal reports, which are not reviewed by a qualified review appraiser or not within the guidelines established in this Chapter for review by certificate holders.

Designation of DOE employees as qualified review appraisers. Such designations will be put in writing by the Chief, Real Property Branch, and will enable the designated individual to exercise approval authority for real property appraisals, regardless of value.

Settlements after condemnation proceedings are instituted: per tract settlement not to exceed \$1 million.

Approval of the use of section 161g of the Atomic Energy Act of 1954 for the sale or outlease of property. This must also be approved by the Office of General Counsel.

Determinations to vest title pursuant to Section III (b) of the Energy Reorganization Act of 1974 (42 U.S. C. 5821 (b)).

Approval of Preliminary Real Estate Plans.

All real estate actions, including those that exceed the limitations specified for approval by the Chief, Real Property Branch, may be approved by any of the following individuals:

Director, Real Property and Facilities Management Division;

Deputy Director, Office Of Information Resources Management;

Director, Office of Information Resources Management;

Director, Office of Administration and Human Resource Management; or

Under Secretary

Exceptions to this delegation are as follows:

Only the Secretary or the Under Secretary may sign Declarations of Taking or Complaints in Condemnation or any other directive which institutes a condemnation action.

Only the Secretary or the Under Secretary may authorize acceptance of a donation of real property.

Only individuals meeting GSA's training requirements will be delegated authority to sign leases under GSA's delegation of authority to the Department of Energy. Such delegations within Headquarters will be by letter delegation to qualified individuals.