

§ 102-85.5

41 CFR Ch. 102 (7-1-10 Edition)

- 102-85.205 What happens if a customer agency continues occupancy after the expiration of an OA?
- 102-85.210 What if a customer agency has to relocate?
- 102-85.215 What if another customer agency forces a GSA customer to move?
- 102-85.220 Can a customer agency forced to relocate waive the reimbursements?
- 102-85.225 What are the funding responsibilities for relocations resulting from emergencies?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 23169, May 8, 2001, unless otherwise noted.

Subpart A—Pricing Policy— General

§ 102-85.5 By what authority is the pricing policy in this part prescribed?

(a) General authority is granted in the Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210(j), 63 Stat. 390 and 86 Stat. 219; (40 U.S.C. 486(c) and 40 U.S.C. 490(j), respectively).

(b) This part implements the applicable provisions of Federal law, including, but not limited to, the:

- (1) Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended;
- (2) Act of July 1, 1898 (40 U.S.C. 285);
- (3) Act of April 28, 1902 (40 U.S.C. 19);
- (4) Act of August 27, 1935 (40 U.S.C. 304c);
- (5) Public Buildings Act of 1959, as amended (40 U.S.C. 601-619);
- (6) Public Buildings Amendments of 1972, Pub. L. 92-313, (86 Stat. 219);
- (7) Rural Development Act of 1972, Pub. L. 92-419, (86 Stat. 674);
- (8) Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note);
- (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.);
- (10) National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);
- (11) Intergovernmental Cooperation Act of 1968 and the Federal Urban Land Use Act (42 U.S.C. 4201-4244; 40 U.S.C. 531-535);
- (12) Public Buildings Cooperative Use Act of 1976, as amended (40 U.S.C. 490(a)(16)-(19), 601a and 612a);
- (13) Public Buildings Amendments of 1988, Pub. L. 100-678, (102 Stat. 4049);

(14) National Historic Preservation Act of 1966 as amended (16 U.S.C. 461 et seq.);

(15) Executive Order 12072 of August 16, 1978 (43 FR 36869);

(16) Executive Order 12411 of March 29, 1983 (48 FR 13391);

(17) Executive Order 12512 of April 29, 1985 (50 FR 18453);

(18) Executive Order 13005 of May 21, 1996 (61 FR 26069); and

(19) Executive Order 13006 of May 21, 1996 (61 FR 26071).

§ 102-85.10 What is the scope of this part?

(a) This part describes GSA policy and principles for the assignment and occupancy of space under its control and the rights and obligations of GSA and the customer agencies that request or occupy such space pursuant to GSA Occupancy Agreements (OA).

(b) Space managed by agencies under delegation of authority from GSA is subject to the provisions of this part.

(c) This part is not applicable to:

(1) Licenses, permits or leases with non-Federal entities under the Public Buildings Cooperative Use Act (40 U.S.C. 490(a)(16-19)); or

(2) The disposal of surplus lease space under section 210(h)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(h)(2)).

§ 102-85.15 What are the basic policies for charging Rent for space and services?

(a) GSA will charge for space and services furnished by GSA (unless otherwise exempted by the Administrator of General Services) a Rent charge which will approximate commercial charges for comparable space and services. Rent for all assignments for GSA-controlled space will be priced according to the principles of the pricing policy in this part. These principles are reflected in the following elements of GSA Rent charges:

(1) “Shell” Rent based on approximate commercial charges for comparable space and services for Federally owned space (accomplished using appraisal procedures);

(2) Rent based on actual cost of the lease, including the costs (if any) of

Federal Management Regulation

§ 102-85.35

services not provided by the lessor, plus a GSA fee;

(3) Amortization of any tenant improvement allowance used;

(4) Any applicable real estate taxes, operating costs, parking, security and joint use fees; and

(5) For certain projects involving new construction or major renovation of Federally-owned buildings, a return on investment pricing approach if an appraisal-determined rental value does not provide a minimum return (OMB discount rate for calculating the present value of yearly costs plus 2%) on the cost of the prospective capital investment. Each specific use of Return on Investment (ROI) pricing must be approved by OMB and duly recorded in an Occupancy Agreement (OA) with the customer agency. Once the ROI methodology is employed to establish Rent for a capital investment, the ROI method must be retained for the duration of the OA term.

(b) Special services not included in the standard levels of service may be provided by GSA on a reimbursable basis. GSA may also furnish alterations on a reimbursable basis in buildings where GSA is responsible for alterations only.

(c) The financial terms and conditions under which GSA assigns, and a customer agency occupies, each block of GSA-controlled space, shall be documented in a written OA.

§ 102-85.20 What does an Occupancy Agreement (OA) do?

An OA defines GSA's relationship with each customer agency and:

(a) Establishes specific financial terms, provisions, rights, and obligations of GSA and its customer for each space assignment;

(b) Minimizes exposure to future unknown costs for both GSA and customer agencies;

(c) Stabilizes Rent payments to the extent reasonable and desired by customers; and

(d) Allows tailoring of space and related services to meet customer agency needs.

§ 102-85.25 What is the basic principle governing OAs?

The basic principle governing OAs is to adopt the private sector practice of capturing in a written document the business terms to which GSA and a customer agency agree concerning individual space assignments.

§ 102-85.30 Are there special rules for certain Federal customers?

Yes, in lieu of OAs, GSA is able to enter into agreements with customer agencies that reflect the parties particular needs. For example, the space and services provided to the U.S. House of Representatives and the U.S. Senate are governed by existing memoranda of agreement (MOA). When there are conflicts between the provisions of this part and MOAs, the MOAs prevail.

§ 102-85.35 What definitions apply to this part?

The following definitions apply to this part:

Accept space or acceptance of space means a commitment from an agency to occupy specified GSA-controlled space.

Agency-controlled and/or operated space means:

(1) Space that is owned, leased, or otherwise controlled or operated by Federal agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended; and

(2) it also includes agency-acquired space for which acquisition authority has been delegated or otherwise granted to the agency by GSA. It does not include space covered by an OA.

Assign or assignment is defined in the definition for space assignment.

Building shell means the complete enveloping structure, the base-building systems, and the finished common areas (building common and floor common) of a building that bound the tenant areas.

Customer agency means any department, agency, or independent establishment in the Federal Government, including any wholly-owned corporation; any executive agency or any establishment in the legislative or judicial branch of the Government (except