

GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

September 16, 2020

Federal Management Regulation

GSA Bulletin FMR B-52

TO: Heads of Federal Agencies

SUBJECT: Clarifying the Process For Meeting Federal Space Needs

1. What is the purpose of this bulletin? This bulletin clarifies certain terms and concepts in part 102-83, Location of Space, to reflect current laws, executive orders (E.O.s), and Office of Management and Budget (OMB) bulletins and management procedure memoranda, thereby bringing federal location policy into compliance with those governing authorities until such time as a new regulation is issued.

2. What are the clarifications on meeting federal space needs?

- A. In meeting federal space needs, Federal agencies must give first consideration to a “centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials” (§ 102-83.85). The phrase “other specific areas” now includes Opportunity Zones and other distressed areas as required by E.O. 13946.
- B. For the purposes of part 102-83, the terms “first consideration” and “preference” are synonymous.
- C. All references to the term “central cities” in part 102-83 mean “principal cities,” as defined in OMB Bulletin No. 18-04, or any succeeding bulletin.
- D. All references to the term “metropolitan areas” (MAs) in part 102-83 mean “core-based statistical areas” (CBSAs), as defined in OMB Bulletin No. 18-04, or any succeeding bulletin.
- E. Urban areas are defined in § 102-83.80, as further clarified in subparagraph 2.C, above, to be those geographic areas within the boundaries of CBSAs, so for purposes of clarification and mutual exclusivity, rural areas, within the context of

part 102-83, are defined as those geographic areas that are outside the boundaries of CBSAs.

- F. Consideration of costs referenced in § 102-83.30 applies in both urban and rural areas. Costs for leased space includes rent and move and replication costs, and for Federally owned space, includes the cost to acquire the site or construct improvements thereon, or both.
- G. Agencies have broad discretion to develop policy and procedures to undertake the consultation with local officials required by §§ 102-83.35 and 102-83.85.
- H. Agencies must incorporate all applicable laws, regulations, and E.O.s, and any accompanying guidance and implementing instructions, into their location decision making.

3. When does this bulletin expire? This bulletin will remain in effect until either modified or canceled.

4. What is the background of this bulletin? Federal agencies must give great weight to FMR part 102-83 when developing procedures for defining delineated areas and evaluating locations for Federal facilities, as these provisions synthesize numerous laws and executive orders. This part, however, has not undergone revision for well over a decade. The clarifications listed above bring part 102-83 into alignment with current terminology and concepts, and aim to provide consistency when applying the existing regulations across Federal agencies and operational regions in advance of issuing new regulations. The justification for each clarification is described in greater detail below:

- A. Opportunity Zones and other distressed areas - Opportunity Zones are census tracts specially designated by state and local officials for targeted development (Pub. L. 115–97). As used in part 102-83, the requirement to give first consideration to centralized business areas and adjacent areas of similar character, including other specific areas that may be recommended by local officials, derives from E.O. 12072. E.O. 13946 added Opportunity Zones and other distressed areas to the list of locations that may be recommended by local officials. Unlike E.O. 12072, E.O. 13946 postdates the issuance of the existing regulation; however, § 102-83.25 requires agencies to comply with all applicable laws, regulations, and E.O.s when making location decisions. This bulletin provides notice to Federal agencies that they must incorporate the provisions of E.O. 13946 into their policies and procedures when making such decisions.
- B. Preference - E.O. 13946 uses the term “preference” rather than “first consideration”; however, the use of the term “preference” is not a material change from “first consideration,” as determined by a federal court in the case of

City of Reading, Pa. v. Austin, 816 F.Supp. 351 (E.D. Pa. 1993), which concluded that “first consideration” and “preference” are synonymous.

- C. Principal Cities - This clarification is necessary because the OMB 2010 *Standards for Delineating Metropolitan and Micropolitan Statistical Areas* (issued 6/28/10) retired the use of the term “central cities” in favor of “principal cities.” The new terminology reflects an updated analysis of how single or multiple urban centers function as commuting destinations and population centers within a single CBSA.
- D. CBSAs - The shift from MA to CBSA first appeared in the OMB 2000 *Standards for Delineating Metropolitan and Micropolitan Statistical Areas* (issued 12/27/2000) and has remained the preferred term to date. CBSAs refer to both Metropolitan and Micropolitan Statistical Areas, which have urbanized cores and surrounding areas with a high degree of integration to those cores. This clarification is necessary to align part 102-83 with the reference documents it cites.
- E. Urban and rural areas - This clarification is necessary because the current definitions for “urban area” and “rural area” in part 102-83 draw on two different sources and are difficult to interpret and implement in practice. These difficulties include a lack of mutual exclusivity and a lack of adherence to jurisdictional boundaries. In addition, relying on census block boundaries means that, on the margins, two adjacent parcels within the same jurisdiction may be designated differently, one as rural and the other as urban. Such an outcome could be subject to challenge.
- F. Definition of Rural Area - “Rural area” for purposes of location policy was originally defined in the *Rural Development Act of 1972* (7 U.S.C. § 2204b-1), which also required the Federal Government to give priority to rural areas when locating federal space. Subsequent revisions of the statute eliminated that definition, but left the priority requirement in place. The definition of “rural area” that is currently in part 102-83 comes from the *Consolidated Farmers Home Administration Act of 1961*, as amended by the *Farm Security and Rural Investment Act of 2002*. It was not intended to guide federal location decision making and is not required by any law or E.O. Clarifying the definition of “rural area” in part 102-83 by making it mutually exclusive with the definition of “urban area” will assist federal agencies with their analysis in advance of the new regulations. In any event, agency mission need remains the primary determinant of whether a federal agency will seek space in an urban or rural area.

- G. Other Site Location Considerations - Federal agencies must balance cost, mission and real estate efficiencies, as well as local development goals, when making location decisions. This clarification expands upon what is already enumerated in § 102-83.30.
- H. Consultation with local officials - The governing authorities that require federal agencies to consult with local officials when making real estate decisions are silent on the format of the consultation. This clarification is necessary to encourage agencies to use the flexibility of part 102-83 on local consultation to develop effective and efficient processes that embody the spirit of the consultation mandate to exchange information with partner stakeholders, while not being overly burdensome to the individual federal location action.
- I. All applicable laws, regulations and executive orders - This clarification is necessary because certain laws and E.O.s that now govern federal location decision making are not referenced in part 102-83 since they postdate the regulation. This clarification reminds federal agencies that, in light of the evolving nature of federal location policy, federal agencies must be cognizant of and incorporate all current applicable laws, regulations and E.O.s, whether or not they are specifically referenced in part 102-83, when developing and implementing location policies and procedures.

5. FOR FURTHER INFORMATION CONTACT: Chris Coneeney, Director, Real Property Policy Division, GSA, at 202-208-2956, or e-mail realpropertypolicy@gsa.gov. Please cite FMR Bulletin B-52.

DocuSigned by:

CAD3199EC3F0432...
Jessica Salmoiraghi

Associate Administrator

Office of Government-wide Policy