



## REAL PROPERTY MANAGEMENT DIVISION POLICY BULLETIN NUMBER 18

October 29, 2007

Subject: Deemed Export Clearance

Category: Real Property Acquisition and Disposal

Programs requesting actions for revocable licenses or outgranting permits must conduct a deemed export review prior to the execution of the agreement. All line programs have trained personnel to conduct the review. The CAO Deemed Export Office can provide further direction and guidance to the line program requesting the action. All program offices have an official that can determine if there is a deemed export issue and how it must be mitigated.

The following clause must be included in permits for use of NOAA property. It has been developed and approved by the DOC Office of General Counsel.

#### DEEMED EXPORT REQUIREMENTS

Use of the property must be in compliance with the Export Administration Regulations, 15 C.F.R. Parts 730-774, in particular, the controls on "deemed exports" as defined in 15 C.F.R. 730.5(c). Permittee/Licensee acknowledges that Permitter/Licensor must complete a controlled technology assessment in accordance with the deemed export requirements set forth in NOAA Administrative Order 207-12, Technology Controls and Foreign National Access. Furthermore, Licensee agrees to notify Permitter/Licensor if Permittee/Licensee intends to bring any controlled technology onto the site or allow access to foreign nationals, for example, to perform equipment maintenance.

Any outgrant will be reviewed by the Lease Review Board and signed by the Chief Administrative Officer unless subsequently delegated. The attached 217-19 excerpt is provided for your use. The highlighted information is to be completed for each action and be a part of the outgrant package. A Lease Review Board checklist is to be completed.



**Number:** DAO 217-19

**Effective Date:** 2005-11-28

**SECTION 3. POLICY.**

.01 Under the conditions established in this Order, the head of an operating unit will allow the use of specifically designated facilities by scientific and other qualified outside individuals and entities.

It is proposed that the \_\_\_\_\_ be allowed use of the # \_\_\_\_\_ Building at a DOC-owned site.

Reference an agreement entitled \_\_\_\_\_ with NOAA's \_\_\_\_\_ Program, Based upon Cooperative Agreement, dated \_\_\_\_\_.

.02 The use of any such facility must be compatible with its design and purpose, and with its associated equipment and other resources. The user must have the technical competence to accomplish independently the activities to be performed under the Memorandum of Agreement authorizing a facility's use. The head of an operating unit has the discretion to determine priority among competing requests for use. In addition, the use must:

a. Be justified as beneficial to the Federal government;

\_\_\_\_\_ will share data acquired with the Federal Government, as specified in the cooperative agreement.

b. Not interfere with the activities or mission of the Department or one of its operating units; and

Revocable License \_\_\_\_\_ dictates that \_\_\_\_\_ equipment will not cause interference, or it will be shut down immediately.

c. Not be likely to result in damage to or misuse of the facility or injury to Department or user personnel.

\_\_\_\_\_ will be conducting research similar to the activities currently being performed at the site by Federal employees.

d. Meet the requirements under Department Administrative Order 207-12, "Foreign National Visitor Guest and Assignee Access Program," when applicable.

Verified with Deemed Export Staff on \_\_\_\_\_.

.03 Use of a facility by non-Department users, and any additional technical assistance, incidental services, or supplies furnished to a user -- in addition to those marginal items allowed normally for a particular facility -- shall be charged to the user at full-cost. Charges shall be consistent with OMB Circular A-25. The head of the operating unit shall deposit any fees collected into the U.S. Treasury as miscellaneous receipts or, if authorized by statute, to an agency account or fund.

Electricity is separately metered, and will be paid by \_\_\_\_\_. No other services or supplies will be furnished by the Federal Government.

.04 The facilities that the heads of operating units make available for non-Federal use must not be also available in an equal or superior form from the domestic private sector on an independent, convenient, and timely basis. The possibility that the Department may (or will) charge a lower cost-to-user fee shall not be a justifying factor unless the user costs for other available facilities are unreasonable.

## **SECTION 7. PROCEDURES.**

This section provides basic procedures to be followed by heads of operating units in making facilities available for proprietary or non-proprietary research purposes, and managing their use by organizations and individuals outside of the Department (see paragraph 3.02, above). For facilities under their jurisdiction, heads of operating units, or their designees, shall:

- a. Designate facilities qualifying for proprietary or non-proprietary research activities, and establish conditions and schedules for their use.
- b. Institute periodic reviews to ensure that the invalid retention of excess property (facilities) is not being accomplished through the designation of certain facilities for research purposes under this Order.

**Response: This building is not excess property.**

- c. Announce, as appropriate, the availability, issue governing rules, and approve each use of any facility designated for research activities.
- d. Ensure that a written justification is prepared for each proposed use of a facility addressing the benefits to the Government and how conditions for use of the facility will be met.

**Response: This information is contained in the Cooperative Agreement and the Revocable License with**

- e. Ensure that permanent records of facilities justifications, approvals, and use are maintained and available. Provide reports to the Department as requested.
- f. Ensure that special conditions for proprietary use are met by either:
  - 1. allowing the user sole access to data or other products obtained through use of the facility; or
  - 2. to the extent there is unavoidable access by the Government, requiring that data or other products obtained by the Government will be returned to the user with the understanding that no act of retention has been made by the operating unit, or any other element of the Department.
- g. Charge all users on a full-cost-recovery basis in accord with paragraph 3.03 of this Order.
- h. Have authority to revoke use of a facility at any time.
- i. Ensure the efficacy of and adherence to the written agreement covering the use of each facility. Initiate appropriate action in the event of a violation. Exhibit 1 of this Order provides a model "Memorandum of Agreement" for proprietary research. Appropriate changes should be made in the model for non-proprietary research consistent with paragraph 5.b. and 7.f. of this Order.