

# ARS □ CSREES □ ERS □ NASS

## *Policies and Procedures*

**Title:** Facilities Construction Authorities

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**Distribution:** ARS Headquarters, Areas, and Locations

This P&P provides information on ARS construction authorizations, appropriation limitations, and the policy for compliance.

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## 1. Introduction

7 U.S.C. 2250 authorizes USDA to construct, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work provided that no building or improvement is constructed or altered in excess of limitations prescribed in the applicable appropriation.

The appropriation statutes, specifically 41 U.S.C. 11, require that no contract or purchase shall be made unless it is under an appropriation adequate to its fulfillment. This mandates that the expenditure of an appropriation will result in an end product (facility) which can be used for the intended purpose. Congress has been specific in its intent that any construction project provide for the completion of a fully functional facility that can be turned over to researchers to begin work immediately. Roads and major equipment items that form an essential part of the laboratory should be included in the budget and considered an integral part of a usable facility. It is inappropriate to use program funds to complete the construction of an incomplete laboratory.

## 2. Construction Appropriations and Authorizations

### ARS Appropriations

Through the budget process, Congress passes an appropriation bill which is enacted by the President.

Appropriations may be either annual or no-year. An annual appropriation is valid and available for 1 fiscal year and must be obligated in the same fiscal year in which the appropriation is made available. A “No-year” appropriation remains available for obligation and expenditure from the fiscal year of the appropriation until the spending purpose has been achieved. “No-year” appropriations cannot be commingled with annual appropriations or other funds without a specific Congressional authorization.

The annual ARS appropriation provisions concerning construction authorizations and limitations may vary with the passage of each annual ARS Appropriation Act. Accordingly, the applicable appropriation language must be checked on a case-by-case basis before obligating any funds.

The annual ARS Appropriation Act is typically similar to the following paragraph. The dollar limitations contained in this paragraph reflect FY 1998 levels and may change each year.

“Appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed **\$250,000** except for headhouses or greenhouses which shall be limited to **\$1,000,000**, and except for ten small buildings to

be constructed or improved at a cost not to exceed **\$500,000**, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or **\$250,000** whichever is greater:....”

This language in the annual Appropriations Act constitutes Congressional authority to obtain construction within these specified categories; but, Congress does not provide additional funding with these construction authorizations.

Currently, the annual Appropriation Act specifies that the limitations on alterations contained in the Act do not apply to modernization and replacement of facilities at Beltsville, Maryland.

Currently, the annual Appropriations Act provides funding for the Agency Repair and Maintenance (R&M) program. Sometimes, the annual Appropriations Act also provides specific funding for R&M projects at specific locations.

Sometimes the annual Appropriations Act also provides specific additional amounts of dollars for acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities under the Buildings and Facilities heading of the Act.

## **ARS Construction Authorizations**

This section defines the various ARS construction programs authorized in the annual ARS appropriation.

**Unlimited Small Buildings (USB):** This is a construction authority to design and construct an unlimited number of small buildings at a cost not to exceed the authorized limitation identified in the applicable annual appropriation act language. Each building must serve to further enhance, pursue, and conduct immediate research program needs.

**Example:** This includes chemical storage buildings and animal shelters and other storage buildings.

**Funding:** Annual base funding is used for this construction program. The Area must provide the funds. The Area Director’s reserve or location appropriation increases. The funds are identified and approved during the Annual Resource Management Planning System (ARMPS)/High Priority Requirements List (HPRL) process.

The appropriation limitation for USB may change (increase or decrease) with each annual appropriation act. The funding limitation includes the combined costs of both design and construction.

Congress does not provide the additional funding with this authorization. Obligations are made using base funds.

**Ten Small Buildings (TSB):** This is a construction authorization to design and construct or improve not more than TSB throughout the Agency at an individual cost not to exceed the authorized limitation identified in the applicable annual appropriation act language. Each building or addition to an existing building must serve to further enhance, pursue, and conduct the immediate research program needs. The Area Office must obtain approval of the proposed TSB project from the National Program Staff (NPS) and request one of the TSB slots from Facilities Division (FD), Administrative and Financial Management (AFM).

**Example:** This includes larger scale chemical or feed storage buildings or animal spaces.

**Funding:** Annual base funding is used for this construction program. The Area must provide the funds for each Agency approved TSB slot. The funds are identified and approved during the ARMPS/HPRL process.

The appropriation limitation for each TSB slot may change (increase or decrease) with each annual appropriation act. The funding limitation includes the combined costs of both design and construction.

Congress does not provide the additional funding with this authorization. Obligations are made using base funds.

**Headhouse/Greenhouse(HH/GH):** This is a construction authority to design and construct an unlimited number of headhouses and/or greenhouses, at a cost not to exceed the authorized limitation identified in the applicable annual appropriation act language.

**Example:** A headhouse is a building constructed at the end of a greenhouse to support the research conducted in the greenhouse.

**Funding:** Annual base funding is normally used for this construction program. The Area must provide the funds. The funds are identified and approved during the ARMPS/HPRL process.

The appropriation limitation for HH/GH may change (increase or decrease) with each annual appropriation act. The funding limitation includes the combined costs of both design and construction.

Congress does not provide the additional funding with this authorization. Obligations are made using base funds.

**10 Percent Alteration (TPA):** This is a construction authority to design and construct an alteration to any one ARS building at a cost not to exceed 10 percent of the building replacement value or the dollar limitation specified in the applicable annual appropriation act language, whichever is larger.

**Example:** An alteration is a change or substitution within the superficial limits of an existing structure including remodeling or renovation of existing space and converting vacant or abandoned interior building space to usable space. An alteration does not add usable square footage to an existing facility.

**Funding:** Annual base funding is used for this construction program. The Area must provide the funds. The funds are identified and approved during the ARMPS/HPRL process.

The appropriation limitation for TPA may change (increase or decrease) with each annual appropriation act. The funding limitation includes the combined costs of both design and construction.

Congress does not provide the additional funding with this authorization. Obligations are made using base funds.

**Repair and Maintenance (R&M):** The R&M Program is specifically intended to improve ARS facilities within specific guidelines: protection of life, protection of property, implementation of mandated regulations, compliance with building codes, more effective space utilization, and implementation of energy conservation. The definition of repair, as customarily applied to ARS facilities and buildings, is the restoration and renovation of components of an existing facility to a condition substantially equivalent to its original state and efficiency with the repair work complying with the requirements contained in the current applicable codes and standards.

**Funding:** Annual funding is usually used for this construction program. The R&M Program is a budget line item which is submitted annually to Congress as part of the annual ARS budget request. This is a national program managed for ARS by AFM and implemented by each Area and FD. The Area submits R&M projects to AFM, FMD and FD, for funding consideration via ARMPS/HPRL. The Area may also fund these projects. There are no limitations other than available funding.

**Examples:**

- HVAC/Electrical/Plumbing System Replacement
- Roof Replacement
- Building Envelope Repair and/or Maintenance
- Site Utility System Replacement/Repair/Maintenance
- Fire Protection Installation/Replacement
- Fume Hood Replacement/Correction of Air Flow Deficiency
- Road Paving (Site Pedestrian and Vehicular Circulation)
- Correction of Site Drainage
- Other Life Safety Systems Installation/Replacement

**Modernization:** This program is an amalgamation of the TPA and R&M construction programs to enhance deteriorating facilities or utility systems on a large scale basis, i.e., million dollar packages, on a priority basis. Facility modernization planning enables the Agency to prioritize major facility renovation locations. Priority research locations are identified by NPS and approved by the Administrator. The objective of the plan is not to expand or build new ARS facilities; but on a priority basis, correct, improve, or upgrade existing facilities to current standards.

Because such projects may involve the use of R&M funds which are not subject to a statutory limitation, and TPA funds, which are subject to a statutory limitation, each element of the work must be classified appropriately and the costs must be charged properly to ensure that there is no violation of the statutory limitation under the TPA authorization.

**Funding:** A specific level of R&M (annual appropriations) funding is set aside for this construction program in the annual Appropriations Act and is used to fund the R&M portion of modernization programs. The TPA portions of modernization programs are funded with base funds rather than R&M funds.

**Example:** Large scale modernization of an entire wing of a laboratory facility or large scale replacement of a power plant.

**Miscellaneous Construction:** This is a construction category to design and construct new non-building type facilities. This category is not used for replacement, repair or maintenance of non-building type facilities.

**Funding:** Annual base funding is used for this construction program. The Area must provide the funds. The funds are identified and approved during the ARMPS/HPRL process.

There are no cost limitations specified for this construction category other than the amount of funding available. Obligations are made using base funds.

**Example:** Miscellaneous construction includes projects which do not fall into any of the other construction authorization, such as roads, dams, bridges, wells, fences, feedlots, irrigation systems, and windmills.

**Major Construction:** (See Manual 242.4 for policies and procedures regarding major construction appropriations, authorizations and limitations.) This is a construction program for the design and construction of new major facilities or renovation (modernization) of existing major facilities. The value of these projects generally exceeds \$1 million.

Since the costs of such projects usually exceed the limitations of the other construction authorizations above, each major project must be funded from an appropriation that is made available specifically for such purposes.

Generally, these appropriations are specified under the Buildings and Facilities heading of the annual Appropriation Act.

The specific annual Appropriation Act language will specify whether the appropriation (limitation) is for planning, design, or construction, or a combination thereof. All costs incurred for major projects are chargeable to this appropriation. These appropriations may not be supplemented (augmented) from other funding sources, unless specifically authorized by Congress.

### **3. Policy**

#### **Authorizations**

It is the policy of ARS that the descriptions of the construction programs and authorizations reflected above will be used to determine which appropriation authorization is applicable to an individual project. The construction authorizations provide only the authority to perform design and construction work and the appropriation limitation which is applicable.

The Area will reflect the appropriate construction authorization or program when submitting the funding request via ARMPS/HPRL.

Regardless of the appropriate construction authorization, (i.e., USB, TSB, headhouse/greenhouse, TPA, R&M, modernization, miscellaneous construction, major), ARS is responsible for the prudent administration of appropriated funds for facility design and construction in support of research programs in accordance with existing legislation and the annual appropriation process.

Since ARS appropriations are enacted on an annual basis, the appropriation limitations of a construction authorization begin to apply when planning or design activity occurs. For instance, in the TSB construction program, planning or design will commit the slot allocation for that fiscal year. Planning and designing of a building in 1 fiscal year also establishes the appropriation limitation for the total project cost even though the construction contract award does not occur until a subsequent fiscal year.

Funds appropriated to ARS can only be used to construct or renovate facilities intended to house ARS programs and employees and ARS cooperator programs and employees that are directly related to Federal activities.

ARS can design and construct or renovate facilities only on land or facilities in which ARS has acquired an appropriate realty interest, as determined by FD and the Area Office.



## Limitations

The appropriation limitations generally apply to design and construction work related only to buildings. The limitations do not apply to standalone miscellaneous construction requirements such as fences, sidewalks, parking lots, substations, transformers, steam tunnels, and other similar non-building type projects.

The appropriation limitations specified in the various construction authorizations include the cost of all services and materials that normally would be acquired by contract that are reasonable and necessary to construct, alter, or improve buildings including the design, fixed equipment, utility systems, site development and other costs necessary to provide a complete and usable facility. The appropriation limitations will not include administrative and/or monitoring costs such as predesign, design review, bid phase, or quality assurance services performed by contract, or services performed by ARS employees.

## Usable Facility

The appropriation statutes require that the expenditure of the appropriation result in a usable facility. To be “usable” the facility **must include** the necessary utilities, such as heat, light, power, ventilation and air conditioning, and safety systems, and be operable. It **must contain all** the necessary built-in equipment, cabinets, benches, and other items permanently attached to the building and capitalized as part of the building or structure. The end product **may exclude** the procurement and installation of personal property and the transfer of existing projects and personnel and **still constitute** a usable facility.

Construction authorizations (TSB, USB, headhouse/greenhouse, and the TPA) and appropriation limitations cannot be combined for use on the same project (except as noted for modernization). For instance, it is not permissible to use a small building authorization to add a vacant wing to a building and use the TPA authorization to convert the vacant interior space to usable space.

Partial facility completion, with the intent to execute additional construction contracts to make it usable in future years, is prohibited. Unless sufficient funds are available to fulfill the need when the commitment is made, the purchase cannot take place. The “bona fide need” of ARS is the completed fully usable facility. Obligating funds for something that does not represent the “bona fide need” of the Agency (the completed fully usable facility) is a violation of the appropriation statutes.

Construction of a facility in fully usable phases may be allowable as long as each completed phase will result in a usable facility. It should be noted that phasing a project in this way generally creates the need to modify or completely reconstruct work completed in previous phases and incurs additional costs, delays, warranty problems, and difficulties in obtaining new work is compatible with existing work.

## **4. Summary of Responsibilities**

### **Administrator.**

- Approve priority research locations.

### **National Program Staff (NPS).**

- Review and approve TSB projects.
- Identify priority research locations.

### **Location/Area Administrative Offices.**

- Assure that Area/location projects and those projects submitted to FD meet the definitions and limitations stated in this P&P.
- Assure that projects accomplished under the TPA authorization meet the definition and limitations of an alteration as stated in this P&P.
- Assure that all projects accomplished under any of the other construction authorizations meet the definition of a usable facility as stated in this P&P.
- Obtain approval of TSB project from NPS and obtain TSB slot from FD.
- Present documentation of above to contracting officials.

### **Program Officials.**

- Determine that the facility will house only ARS programs and employees and/or ARS cooperator programs and employees that are directly related to Federal activities.
- Participate in assuring that appropriation limitations and statutes are not violated.
- Present documentation of above to Contracting Officials.

### **Engineering Officials.**

- Determine whether a particular project can be accomplished under an applicable construction authorization and appropriation limitation.
- Participate in assuring that appropriation limitations and statutes are not violated.
- Present documentation of above to Contracting Officials.

**Real Property Officials.**

- Determine the current replacement value of those buildings to be altered using the TPA authorization.
- Determine the existence of sufficient realty interest.
- Present documentation of above to contracting officials.

**Officials With Architect-Engineering (A-E) and Construction Contracting Authority.**

- Review and confirm that a project can be properly designed and constructed under the applicable construction authorization, appropriation limitation, and statutes.
- Ensure that A-E and construction contract award files are properly documented to show the construction authorization and appropriation limitation applicable for each project.

**Facilities Division.**

- Administer TSB authorization by allocating slots to NPS-approved Area projects.
- Review and confirm that a project can be properly designed and constructed under the applicable construction authorization and appropriation limitation.
- Review and confirm that a project meets the definition of the construction authorization.

/s/

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