

SUBCHAPTER B—PERSONAL PROPERTY

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PART 102-32—MANAGEMENT OF PERSONAL PROPERTY [RESERVED]

PART 102-33—MANAGEMENT OF GOVERNMENT AIRCRAFT

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AUTHORITY: 40 U.S.C. 121(c); 31 U.S.C. 101 et seq.; Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1066-1970 Comp., p. 1070; Executive Order 11541, 35 FR 10737, 3 CFR, 1966-1970 Comp., p. 939; and OMB Circular No. A-126 (Revised May 22, 1992), 57 FR 22150.

SOURCE: 67 FR 67743, Nov. 6, 2002, unless otherwise noted.

Subpart A—How These Rules Apply

GENERAL

§ 102-33.5 To whom do these rules apply?

The rules in this part apply to all federally funded aviation activities of executive agencies of the U.S. Government, except those listed in paragraphs (a), (b), (c), and (d) of this section, who use Government aircraft to accomplish their official business.

(a) The Armed Forces are exempt from all but—

(1) Section 102-33.25(e) and (g), which concern responsibilities related to the Interagency Committee for Aviation Policy (ICAP); and

(2) Subpart D of this part.

(b) The President or Vice President and their offices are exempt.

(c) When an executive agency provides Government-furnished avionics for commercially owned or privately

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owned aircraft for the purpose of technology demonstration or testing, those aircraft are exempt.

(d) Privately owned aircraft that agency personnel use for official travel (even though such use is federally funded) are exempt.

§ 102-33.10 May we request approval to deviate from these rules?

Yes, see §§ 102-2.60 through 102-2.110 of subchapter A of this chapter for guidance on requesting a deviation from the requirements in this part. GSA may not grant deviations from the requirements in OMB Circular A-126, "Improving the Management of Government Aircraft," revised May 22, 1992. You should consult with GSA's Aircraft Management Policy Division (MTA) before you request a deviation. Also, you should fax a copy of your letter of request to MTA at 202-501-6742 at the same time you mail it to GSA's Regulatory Secretariat (see § 102-2.90 of subchapter A of this chapter). In most cases, GSA will respond to your written request within 30 days.

§ 102-33.15 How does this part relate to the Federal Aviation Regulations?

This part does not supersede any of the regulations in 14 CFR chapter I (Federal Aviation Regulations).

§ 102-33.20 What definitions apply to this part?

The following definitions apply to this part:

Acquisition date means the date that the acquiring executive agency took responsibility for the aircraft, e.g., received title (through purchase, exchange, or gift), signed a bailment agreement with the Department of Defense (DOD), took physical custody (in the case of reassignment or inter-agency transfer), received a court order (in the case of forfeiture), put into operational status an aircraft that is newly manufactured by the agency, or otherwise accepted physical transfer (for example, in the case of a borrowed aircraft).

Aircraft Management Policy Division (MTA) is a division in the Office of Transportation and Personal Property, Office of Governmentwide Policy, GSA.

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Contact MTA staff at 1800 F Street, NW., Washington, DC 20405, Room 1221; (202) 501-4866; fax (202) 501-6742; Web site at <http://www.gsa.gov/aircraftpolicy>.

Aircraft part means an individual component or an assembly of components that is primarily designated for and used on aircraft.

Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard, including their regular and Reserve components and members serving without component status. For purposes of this part, the National Guard is also included in the Armed Forces.

Aviation life support equipment (ALSE) means equipment that protects flight crewmembers and others aboard an aircraft, assisting their safe escape, survival, and recovery during an accident or other emergency.

Bailed aircraft means a Federal aircraft that is owned by one executive agency, but is in the custody of and operated by another executive agency under an agreement that may or may not include cost-reimbursement. Bailments are executive agency-to-executive agency agreements and involve only aircraft, not services.

Borrowed aircraft means an aircraft owned by a non-executive agency and provided to an executive agency for use without compensation. The executive agency operates and maintains the aircraft.

Chartered aircraft means an aircraft that an executive agency hires commercially under a contractual agreement specifying performance and one-time exclusive use. The commercial source operates and maintains a charter aircraft. A charter is one form of a full service contract.

Commercial aviation services (CAS) include—

(1) Leasing aircraft for exclusive use or lease-purchasing an aircraft with the intent of taking title;

(2) Chartering or renting aircraft for exclusive use;

(3) Contracting for full services (i.e., aircraft and related aviation services for exclusive use) or obtaining full services through an inter-service support agreement (ISSA); or

(4) Obtaining related aviation services (i.e., services but not aircraft) by commercial contract or ISSA, except

those services acquired to support a Federal aircraft.

Crewmember means a person assigned to operate or assist in operating an aircraft during flight time. Crewmembers perform duties directly related to the operation of the aircraft (e.g., as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (e.g., as flight directors, crew chiefs, electronics technicians, mechanics). For related terms, see *Qualified non-crewmember* and *Passenger* elsewhere in this section.

Criticality code means a single digit code that DOD assigns to military Flight Safety Critical Aircraft Parts (FSCAP) (see § 102-33.370).

Data plate means a fireproof plate that is inscribed with certain information required by the Federal Aviation Regulations (14 CFR part 45) and secured to an aircraft, aircraft engine, propeller, or propeller blade. The information must be marked by etching, stamping, engraving, or other approved method of fireproof marking. The plate must be attached in such a manner that it is not likely to be defaced or removed during normal service or lost or destroyed in an accident. Data plates are required only on certificated aircraft; however, uncertificated aircraft may also have data plates.

Declassify means to remove a non-operational aircraft from the Federal aircraft inventory. Agencies may declassify only non-operational aircraft that they will retain for ground use only. Agencies must declassify an aircraft following the rules in §§ 102-33.415 and 102-33.420.

Disposal date means the date that the disposing executive agency relinquishes responsibility for an aircraft, for example, when the agency transfers title in the case of a sale or exchange; returns the aircraft to the lessor or bailer; declassifies it (for FAIRS, declassification is considered a “disposal” action, even though the agency retains the property); or relinquishes custody to another agency (i.e., in the case of excess (transferred) or surplus (donated or sold) aircraft).

Donated aircraft means an aircraft disposed of as surplus by GSA through donation to a non-federal government, a tax-exempt nonprofit entity, or other

eligible recipient, following the rules in part 102-37 of this subchapter. (Some agencies, for example DOD, may have independent donation authority.)

Exclusive use means a condition under which—

(1) An aircraft is operated for the sole benefit of the U.S. Government; and

(2) The executive agency using the aircraft has operational control of the aircraft and the authority to define departure times, origins and destinations of flights, and payloads, passengers, and cargo.

Executive agency means any executive department or independent establishment in the executive branch of the United States Government, including any wholly owned Government corporation. See 40 U.S.C. 472(a).

Federal Acquisition Regulation (48 CFR chapter 1, parts 1 through 53) is a codified regulation of the U.S. Government that provides uniform policies and procedures for acquisition of personal property and services by executive agencies.

Federal aircraft means an aircraft that an executive agency owns (i.e., holds title to) or borrows for any length of time. When an executive agency loans or bails an aircraft that meets the criteria for Federal aircraft, that loaned or bailed aircraft is still considered a Federal aircraft in the owning agency’s inventory except when DOD is the owning agency of a bailed aircraft. In that case, the aircraft is recorded in the inventory of the bailee.

Federal Aviation Interactive Reporting System (FAIRS). (See §§ 102-33.395 through 102-33.440.)

Federal Aviation Regulation (14 CFR chapter 1) is a codified publication of the U.S. Government that describes uniform policies and procedures for regulating aviation within the national airspace system.

Federal Supply Service (FSS) is a component of GSA. FSS is organized by geographical regions. The FSS Property Management Division in GSA’s Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102-3434, (415) 522-3029, has responsibility for disposing of excess and surplus aircraft.

Federal Travel Regulation (FTR) (41 CFR chapters 300-304) is a codified publication of the U.S. Government that

describes uniform policies and procedures for managing travel of the executive agencies.

Flight Safety Critical Aircraft Part (FSCAP) means any military aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shutdown resulting in an unsafe condition.

Forfeited aircraft means an aircraft acquired by the Government either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States.

Full service contract means a contractual agreement through which an executive agency acquires an aircraft and related aviation services (for example, pilot, crew, maintenance, catering) for exclusive use. Aircraft hired under full service contracts are commercial aviation services (CAS), not Federal aircraft, regardless of the length of the contract.

Government aircraft means an aircraft that is operated for the exclusive use of an executive agency and is a—

(1) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(2) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(i) Leases or lease-purchases with the intent to take title;

(ii) Charters or rents; or

(iii) Hires as part of a full service contract or an inter-service support agreement (ISSA).

Government Aircraft Cost Accounting Guide (CAG) means guidance published by GSA based on the cost elements defined in Attachments A and B to OMB Circular A-126 and in OMB Circular A-76, FAIRS, and the U.S. Government Standard General Ledger to account for Government aircraft costs.

Governmental function means a federally funded activity that an executive agency performs in compliance with its statutory authorities.

Intelligence agencies mean the following agencies or organizations within the U.S. intelligence community:

(1) Central Intelligence Agency.

(2) National Security Agency.

(3) Defense Intelligence Agency.

(4) National Reconnaissance Office.

(5) The Bureau of Intelligence and Research of the Department of State.

(6) Intelligence elements of the Army, Navy, Air Force, Marine Corps, Department of Justice, Department of the Treasury, and Department of Energy.

Inter-service support agreement (ISSA) means any agreement between two or more executive agencies (including the Department of Defense) in which one agency consents to perform aviation support services (i.e., providing an aircraft and other aviation services or providing only services) for another agency with or without cost-reimbursement. An executive agency-to-executive agency agreement that involves only the use of an aircraft, not services, is a bailment, not an ISSA.

Leased aircraft means an aircraft hired under a commercial contractual agreement in which an executive agency has exclusive use of the aircraft for an agreed upon period of time. The acquiring executive agency operates and maintains the aircraft. Leased aircraft are hired as commercial aviation services (CAS).

Lease-purchase aircraft means a leased aircraft for which the leasing executive agency holds an option to purchase.

Life-limited part means any aircraft part that has an established replacement time, inspection interval, or other time-related procedure associated with it. For non-military parts, FAA specifies life-limited parts' airworthiness limitations in 14 CFR chapter I, §§21.50, 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.5, and on product Type Certificate Data Sheets (TCDS) for products certified before airworthiness limitations were added to 14 CFR chapter I. Letters authorizing Technical Standards Orders (TSO) must also note or reference mandatory replacement or inspection of parts.

Loaned aircraft means a Federal aircraft owned by an executive agency, but in the custody of a non-executive agency under an agreement that does not include compensation.

Military aircraft part means an aircraft part used on an uncertificated aircraft that was developed for the Armed Forces.

Non-operational aircraft means a Federal aircraft that is not safe for flight and, in the owning executive agency's determination, cannot economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support equipment capability. An aircraft that is temporarily out of service for maintenance or repair and can economically be made safe for flight is considered operational.

Official Government business, in relation to Government aircraft—

(1) Includes, but is not limited to—

(i) Carrying crewmembers, qualified non-crewmembers, and cargo directly required for or associated with performing Governmental functions (including travel-related Governmental functions);

(ii) Carrying passengers authorized to travel on Government aircraft (see OMB Circular A-126); and

(iii) Training pilots and other aviation personnel.

(2) Does not include—

(i) Using Government aircraft for personal or political purposes, except for required use travel and space available travel as defined in OMB Circular A-126; or

(ii) Carrying passengers who are not officially authorized to travel on Government aircraft.

Operational aircraft means a Federal aircraft that is safe for flight or, in the owning executive agency's determination, can economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support capability. An aircraft temporarily out of service for maintenance or repair is considered operational.

Original equipment manufacturer means the person or company who originally designed, engineered, and manufactured, or who currently holds the data rights to manufacture, a specific aircraft or aircraft part.

Owned aircraft means an aircraft for which title or rights of title are vested in an executive agency. Owned aircraft are considered Federal aircraft.

Passenger means a person flying onboard a Government aircraft who is officially authorized to travel and who is

not a crewmember or qualified non-crewmember.

Production approval holder means the person or company who holds a Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standards Order (TSO) authorization, issued under provisions of 14 CFR part 21, Certification Procedures for Products and Parts, and who controls the design and quality of a specific aircraft part.

Qualified non-crewmember means a person flying onboard a Government aircraft whose skills or expertise are required to perform or are associated with performing the Governmental function for which the aircraft is being operated (qualified non-crewmembers may be researchers, law enforcement agents, fire fighters, agricultural engineers, biologists, etc.). *Qualified non-crewmembers* are not passengers.

Registration mark means the unique identification mark that is assigned by the Federal Aviation Administration and displayed on Government aircraft (including foreign aircraft hired as CAS). *Tail number* is commonly used for *registration mark*.

Related aviation services contract means a commercial contractual agreement through which an executive agency hires aviation services only (not aircraft), e.g., pilot, crew, maintenance, cleaning, dispatching, or catering.

Rental aircraft means an aircraft hired commercially under an agreement in which the executive agency has exclusive use of the aircraft for an agreed upon period of time. The executive agency operates, but does not maintain, a rental aircraft.

Required use means use of a Government aircraft for the travel of an executive agency officer or employee to meet bona fide communications or security needs of the agency or to meet exceptional scheduling requirements. Required use travel must be approved as described in OMB Circular A-126.

Risk analysis and management means a systematic process for—

(1) Identifying risks associated with alternative courses of action involved in an aviation operation; and

(2) Choosing from among these alternatives the course(s) of action that will promote optimum aviation safety.

Safe for flight means approved for flight and refers to an aircraft, aircraft engine, propeller, appliance, or part that has been inspected and certified to meet the requirements of applicable regulations, specifications, or standards. When applied to an aircraft that an executive agency operates under the Federal Aviation Regulations (14 CFR chapter I), safe for flight means “airworthy,” i.e., the aircraft or related parts meet their type designs and are in a condition, relative to wear and deterioration, for safe operation. When applied to an aircraft that an executive agency uses, but does not operate or require to be operated under the Federal Aviation Regulations, safe for flight means a state of compliance with military specifications or the executive agency’s own Flight Program Standards, and as approved, inspected, and certified by the agency.

Senior Aviation Management Official means the person in an executive agency who will be the agency’s primary member of the Interagency Committee for Aviation Policy (ICAP). This person must be of appropriate grade and position to represent the agency and promote flight safety and adherence to standards.

Serviceable aircraft part means a part that is safe for flight, can fulfill its operational requirements, and is sufficiently documented to indicate that the part conforms to applicable standards/specifications.

Suspected unapproved part means a non-military aircraft part, component, or material that any person suspects of not meeting the requirements of an “approved part.” Approved parts are those that are produced in compliance with the Federal Aviation Regulations (14 CFR part 21), are maintained in compliance with 14 CFR parts 43 and 91, and meet applicable design standards. A part, component, or material may be suspect because of its questionable finish, size, or color; improper (or lack of) identification; incomplete or altered paperwork; or any other questionable indication. See detailed guidance in FAA Advisory Circular 21-29, “Detecting and Reporting Suspected

Unapproved Parts,” available from FAA at <http://www.faa.gov>.

Tail number (See registration mark).

Traceable part means an aircraft part whose original equipment manufacturer or production approval holder can be identified by documentation, markings/characteristics on the part, or packaging of the part. Non-military parts are traceable if you can establish that the parts were manufactured under rules in 14 CFR part 21 or were previously determined to be airworthy under rules in 14 CFR part 43. Possible sources for making a traceability determination could be shipping tickets, bar codes, invoices, parts marking (e.g., PMA, TSO), data plates, serial/part numbers, manufacturing production numbers, maintenance records, work orders, etc.

Training means instruction for flight program personnel to enable them to qualify initially for their positions and to maintain qualification for their positions over time.

Travel Management Policy Division (MTT) means GSA’s Office of Transportation and Personal Property, Office of Governmentwide Policy. MTT is responsible for publishing the Federal Travel Regulation (41 CFR chapters 300 through 304), which contains policy for management of travel of U.S. Government personnel and certain others. Contact the MTT staff at 1800 F Street, NW., Washington, DC 20405, Room G-219; (202) 501-1538; see their Web site at <http://www.gsa.gov/travelpolicy>.

Unsalvageable aircraft part means an aircraft part that cannot be restored to a condition that is safe for flight because of its age, its physical condition, a non-repairable defect, insufficient documentation, or its non-conformance with applicable standards/specifications.

RESPONSIBILITIES

§ 102-33.25 What are our responsibilities under this part?

Under this part, your responsibilities are to—

(a) Acquire, manage, and dispose of Government aircraft (i.e., Federal aircraft and commercial aviation services

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(CAS); see §102-33.45) as safely, efficiently, and effectively as possible consistent with the nature of your agency's aviation missions;

(b) Document and report the—

(1) Types and numbers of your Federal aircraft;

(2) Costs of acquiring and operating Government aircraft;

(3) Amount of time that your agency uses Government aircraft; and

(4) Accidents and incidents involving Government aircraft;

(c) Ensure that your Government aircraft are used only to accomplish your agency's official Government business;

(d) Ensure that all passengers traveling on your agency's Government aircraft are authorized to travel on such aircraft (see OMB Circular A-126);

(e) Appoint (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) a Senior Aviation Management Official (SAMO), who will be your agency's primary member of the Interagency Committee for Aviation Policy (ICAP) (this paragraph (e) applies to all executive agencies that use aircraft, including the Department of Defense (DOD), the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB);

(f) Designate an official (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) to certify the accuracy and completeness of information reported by your agency through the Federal Aviation Interactive Reporting System (FAIRS) (this official may be the SAMO or may be another individual who has the appropriate authority). (Armed Forces agencies, which include DOD and the U.S. Coast Guard, are not required to report information to FAIRS.);

(g) Appoint representatives of the agency as members of ICAP subcommittees and working groups; and

(h) Ensure that your agency's internal policies and procedures are consistent with the requirements of OMB Circulars A-126 and A-76 and this part.

§ 102-33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?

The SAMO's duties are to—

(a) Represent the agency's views to the ICAP and vote on behalf of the agency as needed; contribute technical and operational policy expertise to ICAP deliberations and activities; and serve as the designated approving official for FAIRS when the agency elects to have one person serve as both the SAMO and the designated official for FAIRS (DOD will not have a designated official for FAIRS); and

(b) Appoint representatives of the agency as members of ICAP subcommittees and working groups.

§ 102-33.35 How can we get help in carrying out our responsibilities?

To get help in carrying out your responsibilities under this part, you may—

(a) Call or write to GSA's Aircraft Management Policy Division (MTA) (see §102-33.20); or

(b) Find more information on the Internet from the following Web sites:

(1) <http://www.gsa.gov/aircraftpolicy> (GSA Aircraft Management Policy Division).

(2) <http://www.gsa.gov/travelpolicy> (GSA Travel Management Policy Division).

§ 102-33.40 What are GSA's responsibilities for Federal aviation management?

Under OMB Circular A-126, "Improving the Management and Use of Government Aircraft," revised May 22, 1992 (available from <http://www.whitehouse.gov/omb>), GSA's chief responsibilities for Federal aviation management are to maintain—

(a) A single office (i.e., MTA) for developing policy for improving the management of Federal aviation, including acquisition, operation, safety, and disposal of Government aircraft, and publishing that policy;

(b) An interagency committee (i.e., the ICAP), whose members represent the executive agencies that use Government aircraft to conduct their official business (including FAA and NTSB specifically) and advise GSA on developing policy for managing Government aircraft; and

(c) A management information system to collect, analyze, and report information on the inventory, cost,

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usage, and safety of Government aircraft.

NOTE TO § 102-33.40: See OMB Circular A-126 for a complete listing of GSA's responsibilities related to Federal aviation.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

OVERVIEW

§ 102-33.45 What is a Government aircraft?

A Government aircraft is one that is operated for the exclusive use of an executive agency and is a—

(a) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(b) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(1) Leases or lease-purchases with the intent to take title;

(2) Charters or rents; or

(3) Hires as part of a full service contract or an inter-service support agreement (ISSA).

§ 102-33.50 Under what circumstances may we acquire Government aircraft?

Your agency may acquire Government aircraft when you meet the requirements for operating an in-house aviation program contained in OMB Circular A-76, "Performance of Commercial Activities," August 4, 1983 (available from <http://www.whitehouse.gov/omb>), and when—

(a) For Federal aircraft—

(1) Aircraft are the optimum means of supporting your agency's official business;

(2) You do not have aircraft that can support your agency's official business safely (i.e., in compliance with applicable safety standards and regulations) and cost-effectively;

(3) No commercial or other Governmental source is available to provide aviation services safely (i.e., in compliance with applicable safety standards and regulations) and cost-effectively; and

(4) Congress has specifically authorized your agency to purchase, lease, or transfer aircraft and to maintain and

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operate those aircraft (see 31 U.S.C. 1343).

(b) For commercial aviation services (CAS)—

(1) Aircraft are the optimum means of supporting your agency's official business; and

(2) Using commercial aircraft and services is safe (i.e., conforms to applicable laws, safety standards, and regulations) and is more cost effective than using Federal aircraft, aircraft from any other Governmental source, or scheduled air carriers.

§ 102-33.55 Are there restrictions on acquiring Government aircraft?

Yes, you may not acquire—

(a) More aircraft than you need to carry out your official business;

(b) Aircraft of greater size or capacity than you need to perform your Governmental functions cost-effectively; or

(c) Federal aircraft that Congress has not authorized your agency to acquire or Federal aircraft or commercial aircraft and services for which you have not followed the requirements in OMB Circular A-76.

§ 102-33.60 What methods may we use to acquire Government aircraft?

Following the requirements of §§ 102-33.50 and 102-33.55, you (or an internal bureau or sub-agency within your agency) may acquire Government aircraft by means including, but not limited to—

(a) Purchase;

(b) Borrowing from a non-federal source;

(c) Bailment from another executive agency;

(d) Exchange/sale (but only with approval from GSA; see § 102-33.275);

(e) Reimbursable transfer from another executive agency (see §§ 102-36.75 through 102-36.85 of this subchapter B);

(f) Transfer from another executive agency as approved by GSA;

(g) Reassignment from one internal bureau or subagency to another within your agency;

(h) Forfeiture (you must have specific authority to seize aircraft);

(i) Insurance replacement (i.e., receiving a replacement aircraft);

(j) Lease or lease-purchase;

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(k) Rent or charter;

(l) Contract for full services (i.e., aircraft plus crew and related aviation services) from a commercial source; or

(m) Inter-service support agreements with other executive agencies for aircraft and services.

§ 102-33.65 What is the process for acquiring Government aircraft?

Acquiring aircraft generally follows a three-step process; planning, budgeting, and contracting, as described in §§ 102-33.70 through 102-33.105.

PLANNING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102-33.70 What directives must we follow when planning to acquire Government aircraft?

When planning to acquire aircraft, you must follow the requirements in—

(a) 31 U.S. Code Section 1343, “Buying and Leasing Passenger Motor Vehicles and Aircraft”;

(b) OMB Circular A-126, “Improving the Management and Use of Government Aircraft,” revised May 22, 1992;

(c) OMB Circular A-11, Part 7, “Planning, Budgeting, Acquisition, and Management of Capital Assets,” revised June 2002;

(d) OMB Circular A-76, “Performance of Commercial Activities,” revised June 14, 1999; and

(e) OMB Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” revised January 22, 2002.

NOTE TO § 102-33.70: OMB Circulars are available from <http://www.whitehouse.gov/omb>.

§ 102-33.75 What other guidance is available to us in planning to acquire Government aircraft?

You can find guidance for acquisition planning in the “ICAP Fleet Modernization Planning Guide,” which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, and in OMB’s “Capital Programming Guide,” which is a supplement to OMB Circular A-11.

OMB CIRCULAR A-76

§ 102-33.80 Must we comply with OMB Circular A-76 before we acquire Government aircraft?

Yes, before you acquire Government aircraft, you must comply with OMB Circular A-76 to assure that the private sector cannot provide Government aircraft or related aviation services more cost-effectively than you can provide Federal aircraft and related services (see particularly the Circular’s Revised Supplemental Handbook’s Appendix 6, Aviation Competitions).

§ 102-33.85 Where should we send our OMB Circular A-76 Cost-Comparison Studies?

You should forward copies of the completed A-76 Cost-Comparison studies to OMB upon request or as required by OMB Circular A-11 to justify aircraft purchases and to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, upon completion of a study.

THE PROCESS FOR BUDGETING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102-33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?

(a) The process for budgeting to acquire a Federal aircraft or to accept a Federal aircraft transferred from another executive agency requires that you have specific authority from Congress in your appropriation, as called for in 31 U.S.C. 1343, to—

(1) Purchase, lease-purchase, or lease a Federal aircraft and to operate and maintain it; or

(2) Accept a Federal aircraft transferred from another executive agency and to operate and maintain it.

(b) For complete information on budgeting to own Government aircraft (i.e., large purchase of a capital asset), see OMB Circular A-11, Part 7, and the “Capital Programming Guide,” Supplement to Part 7, Appendix 7.

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§ 102-33.95 What is the process for budgeting to acquire commercial aviation services (CAS)?

Except for leases and lease-purchases, for which you must have specific Congressional authorization as required under 31 U.S.C. 1343, you may budget to fund your commercial aviation services (CAS) hires out of your agency's operating budget.

CONTRACTING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102-33.100 What are our responsibilities when contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract?

In contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract, you must follow the Federal Acquisition Regulation (48 CFR chapter 1) unless your agency is exempt from following the Federal Acquisition Regulation.

§ 102-33.105 What special requirements must we put into our CAS contracts?

At a minimum, your contracts and agreements must require that any provider of CAS comply with—

(a) Civil standards in the Federal Aviation Regulations (14 CFR chapter I) applicable to the type of operations you are asking the contractor to conduct;

(b) Applicable military standards; or

(c) Your agency's Flight Program Standards (see §§ 102-33.140 through 102-33.185 for the requirements for Flight Program Standards).

ACQUIRING AIRCRAFT PARTS

§ 102-33.110 What are our responsibilities when acquiring aircraft parts?

When acquiring aircraft parts, you must do the following:

(a) Acquire the parts cost-effectively and acquire only what you need.

(b) Inspect and test (as appropriate) all incoming parts and ensure that they are documented as safe for flight before installing them.

(c) Obtain all logbooks and maintenance records (for guidance on maintaining records for non-military parts, see FAA Advisory Circular 43-9C, "Maintenance Records," which is

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available from the Federal Aviation Administration (FAA)) at <http://www.faa.gov>.

(d) Plan for adequate storage and protection.

(e) Report all Suspected Unapproved Parts (SUP) to the FAA, SUP Program Office, AVR-20, 45005 Aviation Drive, Suite 214, Dulles, VA 20166-7541, by telephone at 703-661-0580, or by calling the FAA Aviation Safety Hotline at 800-255-1111.

§ 102-33.115 Are there special requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, when you acquire military Flight Safety Critical Aircraft Parts (FSCAP), you must—

(a) Accept a FSCAP only when it is documented or traceable to its original equipment manufacturer (a FSCAP's DOD FSCAP Criticality Code should be marked or tagged on the part or appear on its invoice/transfer document; see § 102-33.375 for further explanation of the FSCAP Criticality Codes); and

(b) Not install undocumented, but traceable FSCAP until you have the parts inspected and recertified by the original equipment manufacturer or FAA-approved production approval holder (see § 102-33.370 on FSCAP).

§ 102-33.120 Are there special requirements for acquiring life-limited parts?

Yes, when you acquire new or used life-limited parts, you must—

(a) Identify and inspect the parts, ensuring that they have civil or military-certified documentation (i.e., complete life histories); and

(b) Mutilate and dispose of any expired life-limited parts (see § 102-33.370 on handling life-limited parts).

Subpart C—Managing Government Aircraft and Aircraft Parts

OVERVIEW

§ 102-33.125 If we use Federal aircraft, what are our management responsibilities?

If you use Federal aircraft, you are responsible for—

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(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185;

(b) Accounting for the cost of acquiring, operating, and supporting your aircraft;

(c) Accounting for use of your aircraft;

(d) Maintaining and accounting for aircraft parts;

(e) Reporting inventory, cost, and utilization data (for reporting requirements, see subpart E of this part); and

(f) Properly disposing of aircraft and parts following this part and FMR subchapter B (41 CFR chapter 102, subchapter B).

§ 102–33.130 If we hire CAS, what are our management responsibilities?

If you hire CAS, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185, as applicable, and requiring compliance with these standards in your contracts and agreements;

(b) Accounting for the cost of your aircraft and services hired as CAS;

(c) Accounting for use of your aircraft hired as CAS; and

(d) Reporting the cost and usage data for your CAS hires (for reporting requirements, see subpart E of this part).

§ 102–33.135 Do we have to follow the direction in OMB Circular A–123, “Management Accountability and Control,” June 21, 1995, for establishing management controls for our aviation program?

Yes, you must follow the direction in OMB Circular A–123, “Management Accountability and Control,” June 21, 1995, for establishing management controls for your aviation program. (See Note to § 102–33.70.) The circular requires that you establish organizations, policies, and procedures to ensure that, among other things, your aviation program achieves its intended results and you use your resources consistently with your agency’s missions.

ESTABLISHING FLIGHT PROGRAM STANDARDS

§ 102–33.140 What are Flight Program Standards?

Flight Program Standards are standards specific to your agency’s aviation operations, including your commercial aviation services (CAS) contracts. Your Flight Program Standards must meet the requirements in §§ 102–33.155 through 102–33.185, and they must meet or exceed applicable civil or military rules. When civil or military rules do not apply, you must use risk management techniques to develop Flight Program Standards specifically for your program. In your standards, you must address all aspects of your program, e.g., uncertificated aircraft, high-risk operations, special personnel requirements, that may not be addressed under the rules for civil aircraft in the Federal Aviation Regulations (14 CFR chapter I). The requirements for Flight Program Standards in §§ 102–33.155 through 102–33.185 incorporate and adapt the ICAP’s “Safety Standards Guidelines for Federal Flight Programs,” revised December 22, 1999, and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.145 Why must we establish Flight Program Standards?

You must establish Flight Program Standards to ensure that aircraft your agency uses are operated safely, effectively, and efficiently.

§ 102–33.150 Is any agency exempt from establishing Flight Program Standards under this part?

Yes, in addition to the Armed Forces and intelligence agencies, entities outside the executive branch of the Federal Government are exempt from establishing Flight Program Standards when using aircraft loaned to them by an executive agency (that is, owned by an executive agency, but operated by and on behalf of the loanee) unless the loanee—

(a) Uses the aircraft to conduct official Government business; or

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(b) Is required to follow §§102-33.140 through 102-33.185 under a Memorandum of Agreement governing the loan.

§ 102-33.155 How must we establish Flight Program Standards?

To establish Flight Program Standards, you must write, publish (as appropriate), implement, and comply with detailed, agency-specific standards, which establish or require (contractually, where applicable) policies and procedures for—

- (a) Management/administration of your flight program (in this part, “flight program” includes CAS contracts);
- (b) Operation of your flight program;
- (c) Maintenance of your Government aircraft;
- (d) Training for your flight program personnel; and
- (e) Safety of your flight program.

MANAGEMENT/ADMINISTRATION

§ 102-33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

For management/administration of your flight program, you must establish or require (contractually, where applicable) the following:

- (a) A management structure responsible for the administration, operation, safety, training, maintenance, and financial needs of your aviation operation (including establishing minimum requirements for these items for any commercial contracts).
- (b) Guidance describing the roles, responsibilities, and authorities of your flight program personnel, e.g., managers, pilots and other crewmembers, flight safety personnel, maintenance personnel, and dispatchers.
- (c) Procedures to record and track flight time, duty time, and training of crewmembers.
- (d) Procedures to record and track duty time and training of maintenance personnel.

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OPERATIONS

§ 102-33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

For operation of your flight program, you must establish or require (contractually, where applicable) the following:

- (a) Basic qualifications and currency requirements for your pilots and other crewmembers, maintenance personnel, and other mission-related personnel.
- (b) Limitations on duty time and flight time for pilots and other crewmembers.
- (c) Compliance with owning-agency or military safety of flight notices and operational bulletins.
- (d) Flight-following procedures to notify management and initiate search and rescue operations for lost or downed aircraft.
- (e) Dissemination, as your agency determines appropriate, of a disclosure statement to all crewmembers and qualified non-crewmembers who fly aboard your agency’s Government aircraft, as follows:

Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft

Generally, an aircraft used exclusively for the U.S. Government may be considered a “public aircraft” as defined in Public Law 106-181, provided it is not a Government-owned aircraft transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal Aviation Regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If an agency transports passengers on a Government-owned aircraft or uses that aircraft for commercial purposes, the agency must comply with all Federal Aviation Regulations applicable to civil aircraft. If you have any questions concerning whether a particular flight will be a public aircraft operation or a civil aircraft operation, you should contact the agency sponsor of that flight.

You have certain rights and benefits in the unlikely event you are injured or killed while working aboard a Government-owned or operated aircraft. Federal employees and some private citizens are eligible for workers’ compensation benefits under the Federal Employees’ Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency’s benefits

office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693-0044.

State or foreign laws may provide for product liability or "third party" causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while working or traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) and the U.S. Attorneys Office are authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to State programs for the benefit of victims of terrorist acts or mass violence.

If you are a Federal employee. If you are injured or killed on the job during the performance of duty, including while traveling or working aboard a Government aircraft or other Government-owned or operated conveyance for official Government business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

If you are a private citizen not employed by the Federal government. Even if the Federal government does not regularly employ you, if you are rendering personal service to the Federal government on a voluntary basis or

for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you board a Government aircraft, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

If the agency determines that you are not a "Federal employee," you and your family will not be eligible to receive workers' compensation benefits under FECA. If you are onboard the aircraft for purposes of official Government business, you may be eligible for workman's compensation benefits under state law. If an accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

NOTE: This disclosure statement is not all-inclusive. You should contact your agency's personnel office, or if you are a private citizen, your agency sponsor or point-of-contact for further assistance.

(f) At the origin of each flight, creation of a manifest containing the full names of all persons on board for each leg of flight, a point of contact for each person, and phone numbers for the points of contact.

(g) Documentation of any changes in the manifest by leg, and retention of manifests for two years from the time of flight.

(h) Procedures for reconciling flight manifests with persons actually on board and a method to test those procedures periodically.

(i) At the origin of each flight, preparation of a complete weight and balance computation and a cargo-loading manifest, and retention of this computation and manifest for 30 days from the time of flight.

(j) Appropriate emergency procedures and equipment for specific missions.

(k) Procedures to ensure that required Aviation Life Support Equipment (ALSE) is inspected and serviceable.

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MAINTENANCE

§ 102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

For maintenance of your Government aircraft, you must establish or require (contractually, where applicable) the following:

- (a) Aircraft maintenance and inspection programs that comply with whichever is most applicable among—
 - (1) Programs for ex-military aircraft;
 - (2) Manufacturers' programs;
 - (3) FAA-approved programs (i.e., following the Federal Aviation Regulations);
 - (4) FAA-accepted programs (i.e., those following ICAP guides that have been accepted by the FAA); or
 - (5) Your agency's self-prescribed programs.
- (b) Compliance with owning-agency or military safety of flight notices, FAA airworthiness directives, or mandatory manufacturers' bulletins applicable to the types of aircraft, engines, propellers, and appliances you operate.
- (c) Procedures for operating aircraft with inoperable equipment.
- (d) Technical support, including appropriate engineering documentation and testing, for aircraft, powerplant, propeller, or appliance repairs, modifications, or equipment installations.
- (e) A quality control system for acquiring replacement parts, ensuring that the parts you acquire have the documentation needed to determine that they are safe for flight and are inspected and tested, as applicable.
- (f) Procedures for recording and tracking maintenance actions; inspections; and the flight hours, cycles, and calendar times of life-limited parts and FSCAP.

TRAINING

§ 102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

You must establish or require (contractually, where applicable) an instructional program to train your flight program personnel, initially and on a recurrent basis, in their responsibilities and in the operational skills

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relevant to the types of operations that you conduct. See § 102–33.180(a) for specific requirements for safety manager training.

SAFETY

§ 102–33.180 What standards must we establish or require (contractually, where applicable) for flight program safety?

For flight program safety, you must establish or require (contractually, where applicable) the following:

- (a) The appointment of qualified aviation safety managers (i.e., those individuals who are responsible for an agency's aviation safety program, regardless of title), who must be—
 - (1) Experienced as pilots or crewmembers or in aviation operations management/flight program management; and
 - (2) Graduated from an aviation safety officer course provided by a recognized training provider and authority in aviation safety before appointment or within one year after appointment.
- (b) Risk analysis and risk management to identify and mitigate hazards and provide procedures for managing risk to an optimum level.
- (c) Use of independent oversight and assessments (i.e., unbiased inspections) to verify compliance with the standards called for in this part.
- (d) Procedures for reporting unsafe operations to senior aviation safety managers.
- (e) A system to collect and report information on aircraft accidents and incidents (as required by 49 CFR part 830 and §§ 102–33.445 and 102–33.450).
- (f) A program for preventing accidents, which includes—
 - (1) Measurable accident prevention procedures (e.g., pilot proficiency evaluations, fire drills, hazard analyses);
 - (2) A system for disseminating accident-prevention information;
 - (3) Safety training;
 - (4) An aviation safety awards program; and
 - (5) For Federal aircraft-owning agencies, a safety council.

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§ 102–33.185 What standards must we establish or require (contractually, where applicable) for responding to aircraft accidents and incidents?

For responding to aircraft accidents and incidents, you must establish or require (contractually, where applicable) the following:

(a) An aircraft accident/incident reporting capability to ensure that you will comply with the NTSB's regulations (in 49 CFR parts 830 and 831), including notifying NTSB immediately when you have an aircraft accident or an incident as defined in 49 CFR 830.5.

(b) An accident/incident response plan, modeled on the NTSB's "Federal Plan for Aviation Accidents Involving Aircraft Operated by or Chartered by Federal Agencies," and periodic disaster response exercises to test your plan. You can see a copy of the NTSB's plan on the Web at <http://www.ntsbn.gov/publictn/1999/SPC9904.pdf> or htm.

(c) Procedures (see 49 CFR 831.11) for participating as a party in NTSB's investigations of accidents or incidents involving aircraft that your agency owns or hires and for conducting parallel investigations, as appropriate.

(d) Training in investigating accidents/incidents for your agency's personnel who may be asked to participate in NTSB investigations.

(e) Procedures for disseminating, in the event of an aviation disaster that involves one of your Government aircraft, information about eligibility for benefits that is contained in the disclosure statement in § 102–33.165(e) to anyone injured, to injured or deceased persons' points of contact (listed on the manifest), and to the families of injured or deceased crewmembers and qualified non-crewmembers.

NOTE TO § 102–33.185: This part does not supersede any of the regulations in 49 CFR part 830 or part 831. For definitions of terms and complete regulatory guidance on notifying NTSB and reporting aircraft accidents and incidents, see 49 CFR parts 830 and 831.

ACCOUNTING FOR THE COST OF GOVERNMENT AIRCRAFT

§ 102–33.190 What are the aircraft operations and ownership costs for which we must account?

You must account for the operations and ownership costs of your Govern-

ment aircraft as described in the "Government Aircraft Cost Accounting Guide" (CAG), which follows OMB Circular A–126 and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.195 Do we need an automated system to account for aircraft costs?

If you own Federal aircraft or operate bailed Federal aircraft, you must maintain an automated system to account for aircraft costs by collecting the cost data elements required by the Federal Aviation Interactive Reporting System (FAIRS). The functional specifications and data definitions for a FAIRS-compliant system are described in the "Common Aviation Management Information Standard" (C-AMIS), which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405. See §§ 102–33.395 and 102–33.460 for more information on FAIRS and C-AMIS. Agencies who use only CAS aircraft and do not have Federal aircraft must keep records adequate for reporting information through FAIRS, but are not required to have an automated system (see §§ 102–33.435 and 102–33.440 for the information on CAS that you must report through FAIRS).

§ 102–33.200 Must we periodically justify owning and operating Federal aircraft?

Yes, after you have held a Federal aircraft for five years, you must justify owning and operating the aircraft by reviewing your operations and establishing that you have a continuing need for the aircraft, as required in OMB Circular A–76. You must also establish the cost-effectiveness of all your aircraft operations following OMB-approved cost justification methodologies, which are described in OMB Circular A–76 every five years.

§ 102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

(a) Under 31 U.S.C. 1535 and other statutes, you may be required to recover the costs of operating aircraft in support of other agencies. Depending on the statutory authorities under

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which you acquired and operate your aircraft, you will use either of two methods for establishing the rates charged for using your aircraft:

- (1) The variable cost recovery rate; or
- (2) The full cost recovery rate.

(b) See the Government Aircraft CAG, which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for definitions of these terms.

ACCOUNTING FOR THE USE OF GOVERNMENT AIRCRAFT

§ 102-33.210 How do we account for the use of our Government aircraft?

To account for the use of Government aircraft, you must document all flights and keep this documentation for two years after the date of the flight. For each flight, record the—

- (a) Aircraft's registration mark;
- (b) Owner and operator (e.g., the owner may not be the operator, as is the case when a CAS aircraft, owned commercially, is operated by U.S. Government personnel);
- (c) Purpose of the flight (i.e., the Governmental function that the aircraft was dispatched to perform);
- (d) Departure and destination points;
- (e) Flight date(s) and times;
- (f) A manifest (see §§ 102-33.165(g) and (h)); and
- (g) Name(s) of the pilot(s) and crewmembers.

§ 102-33.215 May we use Government aircraft to carry passengers?

Yes, you may use Government aircraft to carry passengers with the following restrictions:

(a) You may carry passengers only on aircraft that you operate or require contractually to be operated according to the rules and requirements in Federal Aviation Regulations (14 CFR chapter I).

(b) For certain kinds of travel, your agency must justify passengers' presence on Government aircraft (see OMB Circular A-126 and the Government Aircraft Cost Accounting Guide (CAG) published by GSA for complete information on authorizing travel and analyzing costs before authorizing travel on Government aircraft).

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§ 102-33.220 What are the responsibilities of an agency's aviation program in justifying the use of a Government aircraft to transport passengers?

(a) Upon request from an agency's travel approving authority, the agency's aviation program must provide cost estimates to assist in determining whether or not use of a Government aircraft to carry passengers is justified. See OMB Circular A-126 for more information on justifying travel on Government aircraft. See also the Government Aircraft Cost Accounting Guide (CAG) published by GSA (defined in § 102-33.20) for guidance on estimating the cost of using a Government aircraft. The cost of using a Government aircraft is—

- (1) The variable cost of using a Federal aircraft;
- (2) The amount your agency will be charged by a CAS provider; or
- (3) The variable cost of using an aircraft owned by another agency as reported by the owning agency if you are not charged for the use of the aircraft.

(b) In weighing alternatives for travel on Government aircraft, you must also consider the following:

(1) If no follow-on trip is scheduled, all time required positioning the aircraft to begin the trip and to return the aircraft to its normal base of operations.

(2) If a follow-on trip requires repositioning, the cost for the repositioning should be charged to the associated follow-on trip.

(3) If an aircraft supports a multi-leg trip (a series of flights scheduled sequentially), the use of the aircraft for the total trip may be justified by comparing the total variable cost of the entire trip to the commercial aircraft cost (including charter) for all legs of the trip.

(4) The use of foreign aircraft as CAS is authorized when the agency has determined that an equivalent level of safety exists as compared to U.S. operations of a like kind. The safety of passengers shall be the overriding consideration for the selection of travel mode when comparing foreign sources of scheduled commercial airlines and CAS.

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MANAGING AIRCRAFT PARTS

§ 102–33.225 How must we manage aircraft parts?

You must manage your aircraft parts by maintaining proper storage, protection, maintenance procedures, and records for the parts throughout their life cycles.

§ 102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?

You may use dual-use military FSCAP on non-military aircraft operated under restricted or standard airworthiness certificates if the parts are inspected and approved for such installation by the FAA. See detailed guidance in FAA Advisory Circular 20–142, “Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers.”

§ 102–33.235 What documentation must we maintain for life-limited parts and FSCAP?

For life-limited parts and FSCAP, you must hold and update the documentation that accompanies these parts for as long as you use or store them. When you dispose of life-limited parts or FSCAP, the up-to-date documentation must accompany the parts. (See § 102–33.370.)

Subpart D—Disposing of Government Aircraft and Aircraft Parts

OVERVIEW

§ 102–33.240 What must we consider before disposing of aircraft and aircraft parts?

Before disposing of aircraft and aircraft parts, you must first determine if the aircraft or parts are excess to your agency’s mission requirements or if you will need replacements (i.e., your aircraft or parts are not excess), as follows:

(a) If your aircraft/parts are ...	And ...	Then ...
No longer needed to perform, or cannot perform, any Governmental function for your agency, i.e., they are excess to your needs,	You will not replace them.	You must report them to GSA as excess property (see part 102–36 of this subchapter B).
(b) If your aircraft/parts are ...	But ...	Then ...
No longer suitable for performing their mission(s) for your agency,	You need to replace them to continue performing your mission(s).	You are prohibited from exchanging or selling your aircraft unless you ask for and receive approval from GSA to deviate from part 102–39 of this subchapter B. However, exchange/sale of aircraft parts is permitted.

§ 102–33.245 May we report as excess, or replace (i.e., by exchange/sale), both operational and non-operational aircraft?

Yes, you may report as excess both operational and non-operational aircraft by following the rules governing excess property in part 102–36 of this subchapter B. Exchange or sale of aircraft is prohibited by part 102–39 of this subchapter B, so you will need approval from GSA to deviate from that part to replace operational or non-operational aircraft by exchange/sale. (See § 102–33.275 for further guidance on this restriction).

§ 102–33.250 May we report as excess, or replace, declassified aircraft?

Yes, you may report as excess, or replace, a declassified aircraft (see §§ 102–33.415 through 102–33.420 for information on declassifying aircraft). However, a declassified aircraft is no longer considered an aircraft, but may be considered as a group of aircraft parts or other property for ground use only. You must carry such “aircraft parts or other property” on your property records under the appropriate Federal Supply Classification group(s) (e.g., miscellaneous property, but not as an

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“aircraft”). For disposal of the property remaining after declassification of an aircraft, you must follow the property disposal regulations in parts 102-36, 102-37, and 102-39 of this subchapter B.

§ 102-33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?

Yes, you must comply with the documentation procedures described in §102-33.370 if your aircraft and/or engines contain FSCAP or life-limited parts.

§ 102-33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

(a) Yes, when you report as excess, or replace, an aircraft, you must report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS). For complete information, see the “FAIRS User’s Manual,” which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

(b) Within 14 calendar days of the date you dispose of the aircraft, you must report—

(1) The disposal method (e.g., reassignment, inter-agency transfer, donation, sale as surplus or scrap, declassification, or exchange/sale);

(2) The disposal date; and

(3) The identity and type of recipient (e.g., State, educational institution, executive agency, commercial vendor).

REPORTING EXCESS GOVERNMENT AIRCRAFT

§ 102-33.265 What are our options if aircraft are excess to our needs?

If aircraft are excess to your needs, your options include first determining if any of your sub-agencies can use the aircraft. If so, you may reassign the aircraft within your agency. If not, you must report the aircraft as excess property to GSA (see parts 102-36 and 102-37 of this subchapter B). GSA will dispose of the property, giving priority first to transferring it to another Federal agency, next to donating it as surplus

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property, and finally to selling it to the public as surplus.

§ 102-33.270 What is the process for reporting an excess aircraft?

To report an excess aircraft, you must submit a Standard Form (SF) 120, Report of Excess Personal Property (see §102-2.135 of this chapter), to GSA (Federal Supply Service (FSS) Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102-3434, (415) 522-3029). You may also report electronically to GSA’s Federal Disposal System (FEDS). For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305-7240.

REPLACING AIRCRAFT THROUGH EXCHANGE OR SALE

§ 102-33.275 Are there restrictions on replacing aircraft by exchange or sale?

Yes, because aircraft are on GSA’s exchange/sale prohibited list (see part 102-39 of this subchapter B), you may not exchange or sell aircraft unless you obtain approval from GSA to deviate from part 102-39 of this subchapter B (see §102-33.10 on how to request a deviation). In your letter of request to GSA, you must include the full details of your situation and the proposed transaction and certify that—

(a) Your agency’s mission is dependent upon receiving a replacement aircraft;

(b) You will be replacing the aircraft with similar-type property (see §102-39.15 of this subchapter B for a definition of “similar”);

(c) Your replacement will be on a one-for-one basis (you must request and justify a waiver from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, to deviate from the one-for-one rule); and

(d) The exchange or sale meets all other requirements in part 102-39 of this subchapter B.

NOTE TO §102-33.275: The requirement to get GSA’s approval for an exchange/sale does not apply if a Federal statute specifically authorizes your agency to exchange or sell certain aircraft.

§ 102-33.280 What are our options if we need a replacement aircraft?

If you need to replace an aircraft, and you have GSA's prior written approval for a deviation (see § 102-33.275), your options include—

(a) Negotiating and conducting an exchange transaction directly with an aircraft provider and obtaining credit toward the purchase of a replacement aircraft, following the procurement rules applicable to your agency; or

(b) Selling the aircraft and using the proceeds to offset the cost of purchasing a replacement aircraft, following part 102-39 of this subchapter B. The GSA can conduct sales for you; contact GSA (Region 9) for more information.

§ 102-33.285 Do we need to include any special disclaimers in our exchange/sale agreements for uncertificated aircraft or aircraft that we have operated as public aircraft (i.e., not in compliance with the Federal Aviation Regulations, 14 CFR chapter I)?

Yes, when you exchange or sell uncertificated aircraft or aircraft maintained as public aircraft, you must ensure that the exchange or sales offerings contain the following statement:

Warning to purchasers/recipients. The aircraft you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the aircraft into compliance with 14 CFR chapter I, or other applicable standards, by obtaining all necessary FAA inspections or modifications.

§ 102-33.290 What other disclaimers must we include in our exchange/sale agreements for aircraft?

When you exchange or sell aircraft, you must ensure that the following disclaimer is signed by the purchaser/recipient and received by the Government before releasing the aircraft to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this aircraft, its use, or disposition. The purchaser/recipient shall hold the Government

harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

§ 102-33.295 May we exchange or sell an aircraft through reimbursable transfer to another executive agency?

Yes, you may exchange or sell aircraft through reimbursable transfer to another executive agency if you have prior written approval from GSA to deviate from part 102-39 of this subchapter B (see § 102-33.275). See part 102-39, subpart B, and part 102-36 of this subchapter B for more information on reimbursable transfer of property. Before offering to the public an aircraft that is eligible for exchange/sale, you should consult with other executive agencies to find out if any agency is interested in taking the aircraft for reimbursement in funds or in kind (as you are directed in part 102-39 of this subchapter B).

NOTE TO § 102-33.295: Some agencies may also have special congressional authorization to recover costs.

DISPOSING OF AIRCRAFT PARTS

§ 102-33.300 What must we consider before disposing of aircraft parts?

Before disposing of aircraft parts, you must determine if they are excess to your agency's mission requirements or if you will need replacements (i.e., they are not excess). The table in § 102-33.240 shows the differences between excess and replacement parts.

§ 102-33.305 May we report as excess, or replace, FSCAP and life-limited parts?

Yes, you may report as excess, or replace, FSCAP and life-limited parts, but they require special handling. See the tables in § 102-33.370.

§ 102-33.310 May we report as excess, or replace, unsalvageable aircraft parts?

No, you may not report unsalvageable aircraft parts as excess or exchange or sell them for replacements. You must mutilate unsalvageable parts. You may sell the mutilated parts only as scrap or report that scrap to GSA for sale.

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§ 102-33.315 What are the procedures for mutilating unsalvageable aircraft parts?

To mutilate unsalvageable aircraft parts, you must—

(a) Destroy the data plates, remove the serial/lot/part numbers, and cut, crush, grind, melt, burn, or use other means to prevent the parts from being misidentified or used as serviceable aircraft parts. See detailed guidance in the FAA's Advisory Circular 21-38, "Disposition of Unsalvageable Aircraft Parts and Materials," available from the FAA. Call your regional FAA Flight Standards District Office for additional guidance;

(b) Ensure that an authorized official of your agency witnesses and documents the mutilation; and

(c) Retain a signed certification and statement of mutilation.

§ 102-33.320 What must we do if we are unable to perform required mutilation of aircraft parts?

If you are unable to perform the required mutilation of aircraft parts, you must turn in the parts to a Federal or federally approved facility for mutilation and proper disposition. Ensure that any contractor follows the provisions of § 102-33.315 for mutilating and disposing of the parts.

§ 102-33.325 What documentation must we furnish with excess/surplus or replaced parts when they are transferred, donated, exchanged, or sold?

When you transfer, donate, exchange, or sell excess/surplus or replaced parts, you must—

(a) Furnish all applicable labels, tags, and historical and modification records for serviceable aircraft parts;

(b) Mark mutilated parts as unsalvageable (mutilated parts may be sold only for scrap; see § 102-33.315); and

(c) Ensure that all available tags, labels, applicable historical data, life-histories, and maintenance records accompany FSCAP and life-limited parts and that FSCAP criticality codes (see § 102-33.375) are perpetuated on documentation (see § 102-33.330 for additional requirements).

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REPORTING EXCESS AIRCRAFT PARTS

§ 102-33.330 What must we do with aircraft parts that are excess to our needs?

If you have aircraft parts that are excess to your needs, you must first determine if any of your sub-agencies can use the parts. If they can, you may reassign them within your agency. If they cannot, then you must report the excess parts to the GSA FSS Office in your region, using SF 120, Report of Excess Personal Property (see § 102-2.135 of subchapter A of this chapter). When reporting excess FSCAP, you must include the manufacturer's name, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120. You may report electronically using the FEDS system. For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305-7240. See parts 102-36 and 102-37 of this subchapter B on disposing of excess property.

§ 102-33.335 What are the receiving agency's responsibilities in the transfer or donation of aircraft parts?

An agency that receives transferred or donated aircraft parts must:

(a) Verify that all applicable labels and tags and historical and modification records are furnished with serviceable aircraft parts (i.e., parts that are intended for flight use). This requirement does not apply to parts for ground use only. See the tables at § 102-33.370.

(b) Mutilate all transferred or donated parts that you discover to be unsalvageable, and dispose of them properly, following the procedures in § 102-33.315.

§ 102-33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?

In disposing of excess aircraft parts, the GSA Federal Supply Service office in your region reviews your SF 120, Report of Excess Personal Property (see § 102-2.135 of subchapter A of this chapter) for completeness and accuracy (of

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status, condition, and FSCAP and demilitarization codes if applicable) and ensures that the following certification is included on disposal documents (e.g., transfer orders or purchasers' receipts):

Because of the critical nature of aircraft parts' failure and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on an aircraft meet applicable Federal Aviation Regulations and must obtain required certifications. GSA makes no representation as to a part's conformance with the Federal Aviation Administration's requirements.

§ 102–33.345 What are a State agency's responsibilities in the donation of Federal Government aircraft parts?

When a State agency accepts surplus Federal Government aircraft parts for donation, the agency must—

(a) Review donation and transfer documents for completeness and accuracy, and ensure that the certification in § 102–33.340 is included;

(b) Ensure that when the donee determines the part to be unsalvageable, the donee mutilates the part following the procedures in § 102–33.315; and

(c) Ensure that the donee retains, maintains, and perpetuates all documentation for serviceable parts (i.e., parts intended for flight use).

REPLACING AIRCRAFT PARTS THROUGH EXCHANGE OR SALE

§ 102–33.350 Do we need approval from GSA to replace aircraft parts by exchange or sale?

No, you don't need approval from GSA to replace parts by exchange or sale. However, you must follow the provisions of this subpart and part 102–39 of this subchapter B. Replacement parts do not have to be for the same type or design of aircraft, but you must use the exchange allowance or sales proceeds to purchase aircraft parts to support your aviation program to meet the "similarity" requirement in part 102–39 of this subchapter B.

§ 102–33.355 May we do a reimbursable transfer of parts with another executive agency?

Yes, you may request that the Federal Supply Service office in your region approve a reimbursable transfer of aircraft parts under the exchange/sale

authority in part 102–39 of this subchapter B to another executive agency as a way to receive parts in exchange or money to be used to purchase replacement parts.

§ 102–33.360 What is the process for selling or exchanging aircraft parts for replacement?

(a) You or your agent (e.g., another Federal agency or GSA, Federal Supply Service (FSS)) may transact an exchange or sale directly with a non-federal source or do a reimbursable transfer with another executive agency as long as you or your agent—

(1) Follow the provisions in this part and in part 102–39 of this subchapter B.

(2) Ensure that the applicable labels and tags, historical data and modification records accompany the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

Warning to purchasers/recipients. The parts you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the parts into compliance with 14 CFR part 21 or other applicable standards, by obtaining all necessary FAA inspections or modifications.

(3) Ensure that the following certification is signed by the purchaser/recipient and received by the Government before releasing parts to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

(b) GSA, Federal Supply Service (FSS), can conduct sales of aircraft parts for you. Contact your GSA Regional Office for more information.

§ 102–33.365 Must we report exchange or sale of parts to FAIRS?

No, you don't have to report exchange or sale of parts to FAIRS. However, you must keep records of the

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transactions, which GSA may request to see.

(a) Table 1 for disposing of uninstalled FSCAP and life-limited parts follows:

SPECIAL REQUIREMENTS FOR DISPOSING OF FLIGHT SAFETY CRITICAL AIRCRAFT PARTS (FSCAP) AND LIFE-LIMITED PARTS

§ 102–33.370 What must we do to dispose of military FSCAP or life-limited parts?

To dispose of military FSCAP or life-limited parts, you must use the following tables:

TABLE 1 FOR DISPOSING OF UNINSTALLED FSCAP AND LIFE-LIMITED PARTS

(1) If an Uninstalled FSCAP (i.e., not installed in an aircraft or engine)—		
(i) Is documented	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, “FSCAP—NOT AIRWORTHY” (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is undocumented, but traceable to its original equipment manufacturer (OEM) or production approval holder (PAH)—	Then	(A) You may exchange or sell it only to the OEM or PAH under part 102–39 of this subchapter B; (B) GSA may transfer or donate it for flight use, but only by making it a condition of the transfer or donation agreement that the recipient will have the part inspected, repaired, and certified by the OEM or PAH before putting it into service (Note: Mark parts individually to ensure that the recipient is aware of the parts’ service status); or (C) GSA may donate it for ground use only, after you mutilate and mark it, “FSCAP—NOT AIRWORTHY” (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(iii) Is undocumented and untraceable, you must mutilate it, and—	Then	(A) GSA may transfer or donate it for ground use only, after you mark it, “FSCAP—NOT AIRWORTHY” (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You may sell it only for scrap under §§ 102–33.310 and 102–33.315.
(2) If an uninstalled life-limited part (i.e., not installed in an aircraft or engine)—		
(i) Is documented with service life remaining.	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, “EXPIRED LIFE-LIMITED—NOT AIRWORTHY” (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is documented with no service life remaining, or undocumented, GSA may not transfer it to another executive agency for flight use—	But	(A) GSA may transfer or donate it for ground use only, after you mutilate and mark it, “EXPIRED LIFE-LIMITED—NOT AIRWORTHY” (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You must mutilate it and may sell it only for scrap.

(b) Table 2 for disposing of installed life-limited parts follows:

TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS

<p>(1) If a life-limited part is installed in an aircraft or an engine, and it— (i) Is documented with service life remaining—</p>	<p>Then</p>	<p>(A) You may exchange or sell the aircraft or engine, or GSA may transfer the aircraft or engine to another executive agency under parts 102-36 and 102-39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, "EXPIRED LIFE-LIMITED—NOT AIR-WORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).</p>
<p>(ii) Is documented with no service life remaining, or undocumented—</p>	<p>Then</p>	<p>(A) You must remove and mutilate the part before you exchange or sell the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of paragraph (a) of this section). (Note: If an aircraft or engine is exchanged or sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate it before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 in paragraph (a) of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part's service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it "EXPIRED LIFE-LIMITED—NOT AIR-WORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).</p>

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§ 102-33.375 What is a FSCAP Criticality Code?

A FSCAP Criticality Code is a code assigned by DOD to indicate the type of FSCAP: Code "F" indicates a standard FSCAP; Code "E" indicates a nuclear-hardened FSCAP. You must perpetuate a FSCAP's Criticality Code on all property records and reports of excess. If the code is not annotated on the transfer document that you received when you acquired the part, you may contact the appropriate military service or query DOD's Federal Logistics Information System (FLIS—FedLog) using the National Stock Number (NSN) or the part number. For assistance in subscribing to the FLIS service, contact the FedLog Consumer Support Office, 800-351-4381.

Subpart E—Reporting Information on Government Aircraft

OVERVIEW

§ 102-33.380 Who must report information to GSA on Government aircraft?

You must report information to GSA on Government aircraft if your agency—

- (a) Is an executive agency of the United States Government; and
- (b) Owns, lease-purchases, bails, borrows, loans, leases, rents, charters, or contracts for (or obtains by inter-service support agreement) Government aircraft.

§ 102-33.385 Is any civilian executive agency exempt from the requirement to report information to GSA on Government aircraft?

No civilian executive agency is exempt, however, the Armed Forces (including the U.S. Coast Guard, the Reserves, and the National Guard) and

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U.S. intelligence agencies are exempt from the requirement to report to GSA on Government aircraft.

§ 102-33.390 What information must we report on Government aircraft?

(a) You must report the following information to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405:

- (1) Inventory data on Federal aircraft through FAIRS.
- (2) Cost and utilization data on Federal aircraft through FAIRS.
- (3) Cost and utilization data on CAS aircraft and related aviation services through FAIRS.
- (4) Accident and incident data through the ICAP Aircraft Accident Incident Reporting System (AAIRS).
- (5) The results of cost-comparison studies in compliance with OMB Circular A-76 to justify purchasing, leasing, modernizing, replacing, or otherwise acquiring aircraft and related aviation services.

(b) Information on senior Federal officials and others who travel on Government aircraft to GSA, Travel Management Policy Division (MTT), 1800 F Street, NW., Washington, DC 20405 (see OMB Circular A-126 for specific rules and a definition of senior Federal official).

FEDERAL AVIATION INTERACTIVE REPORTING SYSTEM (FAIRS)

§ 102-33.395 What is FAIRS?

FAIRS is a management information system operated by GSA (MTA) to col-

lect, maintain, analyze, and report information on Federal aircraft inventories and cost and usage of Federal aircraft and CAS aircraft (and related aviation services). Users access FAIRS through a highly-secure Web site. The “FAIRS User’s Manual” contains the business rules for using the system and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102-33.400 How must we report to FAIRS?

You must report to FAIRS electronically through a secure Web interface to the FAIRS application on the Internet. For information on becoming a FAIRS user, call GSA, Aircraft Management Policy Division, (MTA).

§ 102-33.405 When must we report to FAIRS?

You must report any changes in your Federal aircraft inventory within 14 calendar days. You must report cost and utilization data to FAIRS at the end of every quarter of the fiscal year (December 31, March 31, June 30, and September 30). However, you may submit your information to FAIRS on a daily, weekly, or monthly basis. To provide enough time to calculate your cost and utilization data, you may report any one quarter’s cost and utilization in the following quarter, as follows:

Quarter	Submit
QTR 1—October 1—December 31	Federal inventory for QTR 1. Federal cost and utilization for previous QTR 4. CAS cost and utilization for previous QTR 4.
QTR 2—January 1—March 31	Federal inventory for QTR 2. Federal cost and utilization for QTR 1. CAS cost and utilization for QTR 1.
QTR 3—April 1—June 30	Federal inventory for QTR 3. Federal cost and utilization for QTR 2. CAS cost and utilization for QTR 2.
QTR 4—July 1—September 30	Federal inventory for QTR 4. Federal cost and utilization for QTR 3. CAS cost and utilization for QTR 3.

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FEDERAL INVENTORY DATA

§ 102-33.410 What are Federal inventory data?

Federal inventory data include information on each of the operational and non-operational Federal aircraft that you own, bail, borrow, or loan. See the "FAIRS User's Manual," published by GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for a complete listing and definitions of the FAIRS Federal inventory data elements.

§ 102-33.415 When may we declassify an aircraft and remove it from our Federal aircraft inventory?

When an aircraft is lost or destroyed, or is otherwise non-operational and you want to retain it, you may declassify it and remove it from your Federal aircraft inventory. When you declassify an aircraft, you remove the data plate permanently, and the resulting "aircraft parts or other property" are no longer considered an aircraft. See §§ 102-33.415 through 102-33.420 for rules on declassifying aircraft, and see part 102-36 or 102-37 of this subchapter B on reporting declassified aircraft as excess.

§ 102-33.420 How must we declassify an aircraft?

To declassify an aircraft, you must—
(a) Send a letter to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, requesting approval to declassify the aircraft and stating that the aircraft is non-operational (which includes lost or destroyed). In this letter, identify the Federal Supply Classification (FSC) group(s) that the declassified aircraft/parts will fall under if applicable, describe the condition of the aircraft (crash-damaged, unrecoverable, parts unavailable, etc.), and include photographs as appropriate.

(b) Within 14 calendar days of receiving GSA's approval to declassify the aircraft—

(1) Following applicable Federal Aviation Regulations (14 CFR 45.13), request approval from your local FAA Flight Standards District Office (FSDO) to remove the manufacturer's data plate;

(2) Within 14 calendar days of receiving approval from FAA to remove the data plate, inform GSA (MTA) of FAA's approval, send the data plate by courier or registered mail to the FAA, as directed by your FSDO, and remove any Certificate of Airworthiness and the aircraft's registration form from the aircraft, complete the reverse side of the registration form, and send both documents to the FAA.

(c) Delete the aircraft from your FAIRS inventory records and update your personal property records, deleting the declassified aircraft from the aircraft category and adding it to another Federal Supply Classification group or groups, as appropriate.

FEDERAL AIRCRAFT COST AND UTILIZATION DATA

§ 102-33.425 What Federal aircraft cost and utilization data must we report?

You must report certain costs for each of your Federal aircraft and the number of hours that you flew each aircraft. In reporting the costs of your Federal aircraft, you must report both the amounts you paid as Federal costs, which are for services the Government provides, and the amounts you paid as commercial costs in support of your Federal aircraft. For a list and definitions of the Federal aircraft cost and utilization data elements, see the "FAIRS User's Manual," which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102-33.430 Who must report Federal aircraft cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report Federal cost and utilization data on all Federal aircraft. Agencies should report Federal cost and utilization data for loaned aircraft only if Federal money was expended on the aircraft.

COMMERCIAL AVIATION SERVICES (CAS) COST AND UTILIZATION DATA

§ 102-33.435 What CAS cost and utilization data must we report?

You must report the costs and flying hours for each CAS aircraft you hire.

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You must also report the costs and contractual periods for related aviation services that you hire (i.e., by contract or through an inter-service support agreement (ISSA)). Report related aviation services that you hire commercially in support of Federal aircraft as “paid out” Federal aircraft costs—do not report them as CAS. See the “FAIRS User’s Manual,” available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405 for a complete description of the CAS data elements reportable to FAIRS.

§ 102-33.440 Who must report CAS cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report CAS cost and utilization data. You must report CAS cost and utilization data if your agency makes payments to—

- (a) Charter or rent aircraft;
- (b) Lease or lease-purchase aircraft;
- (c) Hire aircraft and related services through an ISSA or a full service contract; or
- (d) Obtain related aviation services through an ISSA or by contract except when you use the services in support of Federal aircraft.

ACCIDENT AND INCIDENT DATA

§ 102-33.445 What accident and incident data must we report?

You must report within 14 calendar days to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, all aviation accidents and incidents that your agency is required to report to the NTSB. You may also report other incident information. The GSA and the ICAP will use the collected accident/incident information in conjunction with FAIRS’ data, such as flying hours and missions, to calculate safety statistics for the Federal aviation community and to share safety lessons-learned.

§ 102-33.450 How must we report accident and incident data?

You must report accident and incident data through the ICAP Aviation Accident and Incident Reporting System (AAIRS), which is accessible from

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the Internet. Instructions for using the system and the data elements and definitions for accident/incident reporting are available through the system or from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

COMMON AVIATION MANAGEMENT INFORMATION STANDARD (C-AMIS)

§ 102-33.455 What is C-AMIS?

Common Aviation Management Information Standard (C-AMIS), jointly written by the ICAP and GSA and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, is a guide to assist agencies in developing or modernizing their internal aviation management information systems. C-AMIS includes standard specifications and data definitions related to Federal aviation operations.

§ 102-33.460 What is our responsibility in relation to C-AMIS?

If you use a management information system to provide data to FAIRS by batch upload, you are responsible for ensuring that your system is C-AMIS-compliant. For more information on compliance with C-AMIS, contact GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

PART 102-34—MOTOR VEHICLE MANAGEMENT

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102-34.350 How do we obtain the forms prescribed in this part?

AUTHORITY: 40 U.S.C. 121(c); 40 U.S.C. 17503; 31 U.S.C. 1344; 49 U.S.C. 32917; E.O. 12375.

SOURCE: 74 FR 11871, Mar. 20, 2009, unless otherwise noted.

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Subpart A—General Provisions

§ 102-34.5 What does this part cover?

This part governs the economical and efficient management and control of motor vehicles that the Government owns, leases commercially or leases through GSA Fleet. Agencies will incorporate appropriate provisions of this part into contracts offering Government-furnished equipment in order to ensure adequate control over the use of motor vehicles.

§ 102-34.10 What are the governing authorities for this part?

The authorities for the regulations in this part are 40 U.S.C. 121(c), 40 U.S.C. 17503, 31 U.S.C. 1344, 49 U.S.C. 32917, and E.O. 12375.

§ 102-34.15 Who must comply with these provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102-34.20 What motor vehicles are not covered by this part?

Motor vehicles not covered by this part are:

(a) Military design motor vehicles;

(b) Motor vehicles used for military field training, combat, or tactical purposes;

(c) Motor vehicles used principally within the confines of a regularly established military post, camp, or depot; and

(d) Motor vehicles regularly used by an agency to perform investigative, law enforcement, or intelligence duties, if the head of the agency determines that exclusive control of the vehicle is essential for effective performance of duties, although such vehicles are subject to subpart D and subpart J of this part.

§ 102-34.25 To whom do “we”, “you”, and their variants refer?

Unless otherwise indicated, use of pronouns “we”, “you”, and their variants throughout this part refer to you as an executive agency, as your agency’s fleet manager, or as a motor vehicle user or operator, as appropriate.

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§ 102-34.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102-2.60 through 102-2.110 of this chapter for information on how to obtain a deviation from this part.

DEFINITIONS

§ 102-34.35 What definitions apply to this part?

The following definitions apply to this part:

Commercial design motor vehicle means a motor vehicle procurable from regular production lines and designed for use by the general public.

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 60 continuous days or more. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101-26.5.)

Domestic fleet means all reportable motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Foreign fleet means all reportable motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Government motor vehicle means any motor vehicle that the Government owns or leases. This includes motor vehicles obtained through purchase, excess, forfeiture, commercial lease, or GSA Fleet lease.

Government-owned motor vehicle means any motor vehicle that the Government has obtained through purchase, excess, forfeiture, or otherwise and for which the Government holds title.

GSA Fleet lease means obtaining a motor vehicle from the General Services Administration Fleet (GSA Fleet).

Law enforcement motor vehicle means a light duty motor vehicle that is specifically approved in an agency's appropriation act for use in apprehension, surveillance, police or other law enforcement work or specifically designed for use in law enforcement. If not identified in an agency's appropriation language, a motor vehicle quali-

fies as a law enforcement motor vehicle only in the following cases:

(1) A passenger automobile having heavy duty components for electrical, cooling and suspension systems and at least the next higher cubic inch displacement or more powerful engine than is standard for the automobile concerned;

(2) A light truck having emergency warning lights and identified with markings such as "police;"

(3) An unmarked motor vehicle certified by the agency head as essential for the safe and efficient performance of intelligence, counterintelligence, protective, or other law enforcement duties; or

(4) A forfeited motor vehicle seized by a Federal agency that is subsequently used for the purpose of performing law enforcement activities.

Light duty motor vehicle means any motor vehicle with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Light truck means a motor vehicle on a truck chassis with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Military design motor vehicle means a motor vehicle (excluding commercial design motor vehicles) designed according to military specifications to directly support combat or tactical operations or training for such operations.

Motor vehicle means any vehicle, self propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a military design motor vehicle or vehicles not covered by this part (see § 102-34.20).

Motor vehicle identification (also referred to as "motor vehicle markings") means the legends "For Official Use Only" and "U.S. Government" placed on a motor vehicle plus other legends readily identifying the department, agency, establishment, corporation, or service by which the motor vehicle is used.

Motor vehicle markings (see definition of "Motor vehicle identification" in this section).

Motor vehicle purchase means buying a motor vehicle from a commercial

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source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101-26.5.)

Motor vehicle rental means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 60 continuous days.

Motor vehicles transferred from excess means obtaining a motor vehicle reported as excess and transferred with or without cost.

Owning agency means the executive agency that holds the vehicle title, manufacturer's Certificate of Origin, or is the lessee of a commercial lease. This term does not apply to agencies that lease motor vehicles from the GSA Fleet.

Passenger automobile means a sedan or station wagon designed primarily to transport people.

Reportable motor vehicles are any Government motor vehicles used by an executive agency or activity, including those used by contractors. Also included are motor vehicles designed or acquired for a specific or unique purpose, including motor vehicles that serve as a platform or conveyance for special equipment, such as a trailer. Excluded are material handling equipment and construction equipment not designed and used primarily for highway operation (e.g., if it must be trailered or towed to be transported).

Using agency means an executive agency that obtains motor vehicles from the GSA Fleet, commercial firms or another executive agency and does not hold the vehicle title or manufacturer's Certificate of Origin. However, this does not include an executive agency that obtains a motor vehicle by motor vehicle rental.

Subpart B—Obtaining Fuel Efficient Motor Vehicles

§ 102-34.40 Who must comply with motor vehicle fuel efficiency requirements?

(a) Executive agencies operating domestic fleets must comply with motor vehicle fuel efficiency requirements for such fleets.

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(b) This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement or emergency rescue work and foreign fleets. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing Government motor vehicles.

§ 102-34.45 How are passenger automobiles classified?

Passenger automobiles are classified in the following table:

Sedan class	Station wagon class	Descriptive name
I	I	Subcompact.
II	II	Compact.
III	III	Midsize.
IV	IV	Large.
V	Limousine..	

§ 102-34.50 What size motor vehicles may we obtain?

(a) You may only obtain the minimum size of motor vehicle necessary to fulfill your agency's mission in accordance with the following considerations:

- (1) You must obtain motor vehicles that achieve maximum fuel efficiency.
- (2) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet your agency's mission.
- (3) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, you must obtain midsize (class III) or smaller sedans.

(4) Obtain large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

(b) Agencies must establish and document a structured vehicle allocation methodology to determine the appropriate size and number of motor vehicles (see FMR Bulletin B-9, located at <http://www.gsa.gov/bulletin>, for guidance).

§ 102-34.55 Are there fleet average fuel economy standards we must meet?

(a) Yes. 49 U.S.C. 32917 and Executive Order 12375 require that each executive agency meet the fleet average fuel

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economy standards in place as of January 1 of each fiscal year. The standards for passenger automobiles are prescribed in 49 U.S.C. 32902(b). The Department of Transportation publishes the standards for light trucks and amendments to the standards for passenger automobiles at <http://www.dot.gov>.

(b) These standards do not apply to military design motor vehicles, law enforcement motor vehicles, or motor vehicles intended for emergency rescue.

§ 102-34.60 How do we calculate the average fuel economy for Government motor vehicles?

You must calculate the average fuel economy for Government motor vehicles as follows:

(a) Because there are so many motor vehicle configurations, you must take an average of all light duty motor vehicles by category that your agency obtained and operated during the fiscal year.

(b) This calculation is the sum of such light duty motor vehicles divided by the sum of the fractions representing the number of motor vehicles of each category by model divided by the unadjusted city/highway mile-per-gallon ratings for that model. The unadjusted city/highway mile-per-gallon ratings for each make and model are published by the Environmental Protection Agency (EPA) for each model year and published at <http://www.fueleconomy.gov>.

(c) An example follows:

Light trucks:

(i) 600 light trucks acquired in a specific year. These are broken down into:

(A) 200 Six cylinder automatic transmission pick-up trucks, EPA rating: 24.3 mpg, plus

(B) 150 Six cylinder automatic transmission mini-vans, EPA rating: 24.8 mpg, plus

(C) 150 Eight cylinder automatic transmission pick-up trucks, EPA rating: 20.4 mpg, plus

(D) 100 Eight cylinder automatic transmission cargo vans, EPA rating: 22.2 mpg.

$$\begin{aligned}
&= \frac{600}{\frac{200}{24.3} + \frac{150}{24.8} + \frac{150}{20.4} + \frac{100}{22.2}} \\
&= \frac{600}{8.2305 + 6.0484 + 7.3530 + 4.5045} \\
&= \frac{600}{26.1364} = 22.9565 \text{ (Rounded to nearest 0.1 mpg.)}
\end{aligned}$$

(ii) Fleet average fuel economy for light trucks in this case is 23.0 mpg.

§ 102-34.65 How may we request an exemption from the fuel economy standards?

You must submit a written request for an exemption from the fuel economy standards to: Administrator, General Services Administration, ATTN: Deputy Associate Administrator, Office of Travel, Transportation and Asset Management (MT), Washington, DC 20405.

(a) Your request for an exemption must include all relevant information

necessary to permit review of the request that the vehicles be exempted based on energy conservation, economy, efficiency, or service. Exemptions may be sought for individual vehicles or categories of vehicles.

(b) GSA will review the request and advise you of the determination within 30 days of receipt. Light duty motor vehicles exempted under the provisions of this section must not be included in calculating your fleet average fuel economy.

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§ 102-34.70 What do we do with completed calculations of our fleet vehicle acquisitions?

You must maintain the average fuel economy data for each year's vehicle acquisitions on file at your agency headquarters in accordance with the National Archives and Records Administration, General Records Schedule 10, Motor Vehicle and Aircraft Maintenance and Operations Records, Item 4, Motor Vehicle Report Files. Exemption requests and their disposition must also be maintained with the average fuel economy files.

§ 102-34.75 Who is responsible for monitoring our compliance with fuel economy standards for motor vehicles we obtain?

Executive agencies are responsible for monitoring their own compliance with fuel economy standards for motor vehicles they obtain.

§ 102-34.80 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plans, contact the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

Subpart C—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

§ 102-34.85 What motor vehicles require motor vehicle identification?

All Government motor vehicles must display motor vehicle identification unless exempted under § 102-34.160, § 102-34.175 or § 102-34.180.

§ 102-34.90 What motor vehicle identification must we display on Government motor vehicles?

Unless exempted under § 102-34.160, § 102-34.175 or § 102-34.180, Government motor vehicles must display the following identification:

- (a) "For Official Use Only";
- (b) "U.S. Government"; and
- (c) Identification that readily identifies the agency owning the vehicle.

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§ 102-34.95 What motor vehicle identification must the Department of Defense (DOD) display on motor vehicles it owns or leases commercially?

Unless exempted under § 102-34.160, § 102-34.175 or § 102-34.180, the following must appear on motor vehicles that the DOD owns or leases commercially:

- (a) "For Official Use Only"; and
- (b) An appropriate title for the DOD component responsible for the vehicle.

§ 102-34.100 Where is motor vehicle identification displayed?

Motor vehicle identification is displayed as follows:

- (a) *For most Government motor vehicles*, preferably on the official U.S. Government license plate. Some Government motor vehicles may display motor vehicle identification on a decal in the rear window, or centered on both front doors if the vehicle is without a rear window, or where identification on the rear window would not be easily seen.

- (b) *For trailers*, on both sides of the front quarter of the trailer in a conspicuous location.

NOTE TO § 102-34.100: Each agency or activity that uses decals to identify Government motor vehicles is responsible for acquiring its own decals and for replacing them when necessary due to damage or wear.

§ 102-34.105 Before we sell a motor vehicle, what motor vehicle identification must we remove?

You must remove all motor vehicle identification before you transfer the title or deliver the motor vehicle.

LICENSE PLATES

§ 102-34.110 Must Government motor vehicles use Government license plates?

Yes, you must use Government license plates on Government motor vehicles, with the exception of motor vehicles exempted under § 102-34.160, § 102-34.175 or § 102-34.180.

§ 102-34.115 Can official U.S. Government license plates be used on motor vehicles not owned or leased by the Government?

No, official U.S. Government license plates may only be used on Government motor vehicles.

§ 102-34.120 Do we need to register Government motor vehicles?

If the Government motor vehicle displays U.S. Government license plates and motor vehicle identification, you do not need to register it in the jurisdiction where the vehicle is operated, however, you must register it in the Federal Government Motor Vehicle Registration System. GSA Fleet may register motor vehicles leased from GSA Fleet. Motor vehicles that have been exempted from the requirement to display official U.S. Government license plates under section §102-34.160, §102-34.175 or §102-34.180 must be registered and inspected in accordance with the laws of the jurisdiction where the motor vehicle is regularly operated.

§ 102-34.125 Where may we obtain U.S. Government license plates?

You may obtain U.S. Government license plates for domestic fleets—

(a) By contacting: U.S. Department of Justice, UNICOR, Federal Prison Industries, Inc., 400 First Street, NW., Room 6010, Washington, DC 20534.

(b) For assistance with any issues involving license plates, contact the following office: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: vehicle.policy@gsa.gov.

NOTE TO § 102-34.125: GSA has established a Memorandum of Understanding (MOU) on behalf of all Federal agencies with Federal Prison Industries (UNICOR) for the procurement of official U.S. Government license plates. Each agency must execute an addendum to this MOU providing plate design and specific ordering and payment information before ordering license plates. Agency field activities should contact their national level Agency Fleet Manager for assistance.

§ 102-34.130 How do we display U.S. Government license plates on Government motor vehicles?

(a) Display official U.S. Government license plates on the front and rear of all Government motor vehicles. The exception is two-wheeled motor vehicles and trailers, which require rear license plates only.

(b) You must display U.S. Government license plates on the Government motor vehicle to which the license plates were assigned.

(c) Display the U.S. Government license plates until the Government motor vehicle is removed from Government service or is transferred outside the agency, or until the plates are damaged and require replacement. U.S. Government license plates shall only be used for one Government motor vehicle and shall not be reissued to another Government motor vehicle.

(d) For motor vehicles owned or commercially leased by DOD, also follow DOD regulations.

§ 102-34.135 What do we do about a lost or stolen license plate?

You must report the loss or theft of license plates as follows:

(a) *U.S. Government license plates.* Report to your local security office (or equivalent), local police, to GSA Fleet when a GSA Fleet leased motor vehicle is involved, and to the Federal Government Motor Vehicle Registration System.

(b) *District of Columbia or State license plates.* Report to your local security office (or equivalent) and either the District of Columbia Department of Transportation, or the State Department of Motor Vehicles, as appropriate.

§ 102-34.140 What records do we need to keep on U.S. Government license plates?

You must keep a central record of all U.S. Government license plates for Government motor vehicles. The GSA Fleet must also keep such a record for GSA Fleet vehicles. The record must:

(a) Identify the motor vehicle to which each set of plates is assigned; and

(b) List lost, stolen, destroyed, and voided license plate numbers.

§ 102-34.145 How are U.S. Government license plates coded?

U.S. Government license plate numbers will be preceded by a letter code that designates the owning agency for the motor vehicle. The agency letter codes are listed in GSA Bulletin FMR Bulletin B-11. (FMR bulletins are located at <http://www.gsa.gov/bulletin>.)

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§ 102-34.150 How can we get a new license plate code designation?

To obtain a new license plate code designation, write to the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

IDENTIFICATION EXEMPTIONS

§ 102-34.155 What are the types of motor vehicle identification exemptions?

The types of motor vehicle identification exemptions are:

- (a) Limited exemption.
- (b) Unlimited exemption.
- (c) Special exemption.

§ 102-34.160 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

Yes. The head of your agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification (see § 102-34.165). For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102-34.165 What information must the limited exemption certification contain?

The certification must state that identifying the motor vehicle would endanger the security of the vehicle occupants or otherwise compromise the agency mission.

§ 102-34.170 For how long is a limited exemption valid?

An exemption granted in accordance with § 102-34.160 may last from one day up to 3 years. If the requirement for exemption still exists beyond 3 years, your agency must re-certify the continued exemption. For a motor vehicle leased from the GSA Fleet, send a copy of the re-certification to the: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

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§ 102-34.175 What motor vehicles have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification when identifying these motor vehicles would interfere with those duties.

§ 102-34.180 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification on some of their vehicles?

Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 are exempt from the requirement to display motor vehicle identification.

§ 102-34.185 What license plates do we use on motor vehicles that are exempt from motor vehicle identification requirements?

For motor vehicles that are exempt from motor vehicle identification requirements, display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated (see § 102-34.120).

§ 102-34.190 What special requirements apply to exempted motor vehicles using District of Columbia or State license plates?

Your agency head must designate an official to authorize the District of Columbia (DC) or State motor vehicle department to issue DC license plates or State license plates for motor vehicles exempt from displaying U.S. Government license plates and motor vehicle identification. The agency head must provide the name and signature of that official to the DC Department of Transportation annually, or to the equivalent State vehicle motor vehicle department, as required. Agencies must pay DC and the States for these license plates in accordance with DC or State policy. Also, for motor vehicles leased from the GSA Fleet, send a list of the

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new plates to: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.195 Must we submit a report concerning motor vehicles exempted under this subpart?

Yes. If asked, the head of each executive agency must submit a report concerning motor vehicles exempted under this subpart. This report, which has been assigned interagency report control number 1537–GSA–AR, should be submitted to the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

Subpart D—Official Use of Government Motor Vehicles

§ 102–34.200 What is official use of Government motor vehicles?

Official use of a Government motor vehicle is using a Government motor vehicle to perform your agency's mission(s), as authorized by your agency.

§ 102–34.205 May I use a Government motor vehicle for transportation between my residence and place of employment?

No, you may not use a Government motor vehicle for transportation between your residence and place of employment unless your agency authorizes such use after making the necessary determination under 31 U.S.C. 1344 and part 102–5 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102–34.210 May I use a Government motor vehicle for transportation between places of employment and mass transit facilities?

Yes, you may use a Government motor vehicle for transportation between places of employment and mass transit facilities under the following conditions:

(a) The head of your agency must make a determination in writing, valid for one year, that such use is appropriate and consistent with sound budget policy, and the determination must be kept on file;

(b) There is no safe and reliable commercial or duplicative Federal mass transportation service that serves the same route on a regular basis;

(c) This transportation is made available, space provided, to other Federal employees;

(d) Alternative fuel vehicles should be used to the maximum extent practicable;

(e) This transportation should be provided in a manner that does not result in any additional gross income for Federal income tax purposes; and

(f) Motor vehicle ridership levels must be frequently monitored to ensure cost/benefit of providing and maintaining this transportation.

§ 102–34.215 May Government contractors use Government motor vehicles?

Yes, Government contractors may use Government motor vehicles when authorized in accordance with the Federal Acquisition Regulation (FAR), GSA Fleet procedures, and the following conditions:

(a) Government motor vehicles are used for official purposes only and solely in the performance of the contract;

(b) Government motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and part 102–5 of this chapter; and

(c) Contractors must:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of, Government motor vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using Government motor vehicles other than in the performance of the contract.

§ 102–34.220 What does GSA do if it learns of unofficial use of a Government motor vehicle?

GSA reports the matter to the head of your agency. The agency investigates and may, if appropriate, take disciplinary action under 31 U.S.C. 1349 or may report the violation to the Attorney General for prosecution under 18 U.S.C. 641.

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§ 102-34.225 How are Federal employees disciplined for misuse of Government motor vehicles?

If an employee willfully uses, or authorizes the use of, a Government motor vehicle for other than official purposes, the employee is subject to suspension of at least one month or, up to and including, removal by the head of the agency (31 U.S.C. 1349).

§ 102-34.230 How am I responsible for protecting Government motor vehicles?

When a Government motor vehicle is under your control, you must:

(a) Park or store the Government motor vehicle in a manner that reasonably protects it from theft or damage; and

(b) Lock the unattended Government motor vehicle. (The only exception to this requirement is when fire regulations or other directives prohibit locking motor vehicles in closed buildings or enclosures.)

§ 102-34.235 Am I bound by State and local traffic laws?

Yes. You must obey all motor vehicle traffic laws of the State and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate State or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102-34.240 Who pays for parking fees?

You must pay parking fees while operating a Government motor vehicle. However, you can expect to be reimbursed for parking fees incurred while performing official duties.

§ 102-34.245 Who pays for parking fines?

If you are fined for a parking violation while operating a Government motor vehicle, you are responsible for paying the fine and will not be reimbursed.

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§ 102-34.250 Do Federal employees in Government motor vehicles have to use all safety devices and follow all safety guidelines?

Yes, Federal employees in Government motor vehicles have to use all provided safety devices including safety belts and follow all appropriate motor vehicle manufacturer safety guidelines.

Subpart E—Replacement of Motor Vehicles

§ 102-34.255 What are motor vehicle replacement standards?

Motor vehicle replacement standards specify the minimum number of years in use or miles traveled at which an executive agency may replace a Government-owned motor vehicle (see § 102-34.270).

§ 102-34.260 May we replace a Government-owned motor vehicle sooner?

Yes. You may replace a Government-owned motor vehicle if it needs body or mechanical repairs that exceed the fair market value of the motor vehicle. Determine the fair market value by adding the current market value of the motor vehicle plus any capitalized motor vehicle additions (such as a utility body or liftgate) or repairs. Your agency head or designee must review the replacement in advance.

§ 102-34.265 May we keep a Government-owned motor vehicle even though the standard permits replacement?

Yes. The replacement standard is a minimum only, and therefore, you may keep a Government-owned motor vehicle longer than shown in § 102-34.270 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102-34.270 How long must we keep a Government-owned motor vehicle?

You must keep a Government-owned motor vehicle for at least the years or miles shown in the following table, unless it is no longer needed and declared excess:

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TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years ¹	Or miles ¹
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity	n/a	280,000
City	n/a	150,000
School	n/a	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500–23,999 pounds GVWR	7	60,000
24,000 pounds GVWR and over	9	80,000
4- or 6-wheel drive motor vehicles	6	40,000

¹ Minimum standards are stated in both years and miles; use whichever occurs first.

Subpart F—Scheduled Maintenance of Motor Vehicles

§ 102–34.275 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease commercially. This requirement applies to domestic fleets, and is recommended for foreign fleets. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

- (a) Meet Federal and State emissions and safety standards;
- (b) Meet manufacturer warranty requirements;
- (c) Ensure the safe and economical operating condition of the motor vehicle throughout its life; and
- (d) Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102–34.280 What State inspections must we have for Government motor vehicles?

You must have the following State inspections for Government motor vehicles:

- (a) Federally-mandated emissions inspections when required by the relevant State motor vehicle administration or State environmental department. Your agency must pay for these inspections if the fee is not waived. GSA Fleet will pay the cost of these inspections for motor vehicles leased from GSA Fleet; or

(b) For motor vehicles that display license plates issued by a State, Commonwealth, territory, or possession of the United States, motor vehicle safety inspections required by the relevant motor vehicle administration. Your agency must pay for these inspections unless the fee is waived. Payment for these inspections for motor vehicles leased from GSA Fleet is the responsibility of the using agency. Government motor vehicles that display official U.S. Government license plates do not require motor vehicle safety inspections.

§ 102–34.285 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance program, contact the: General Services Administration, Attn: Motor Vehicle Policy, Washington, DC 20405. E-mail: vehicle.policy@gsa.gov.

Subpart G—Motor Vehicle Crash Reporting

§ 102–34.290 What forms do I use to report a crash involving a domestic fleet motor vehicle?

Use the following forms to report a domestic fleet crash. The forms should be carried in any domestic fleet motor vehicle.

- (a) *Standard Form (SF) 91, Motor Vehicle Accident Report*. The motor vehicle operator should complete this form at the time and scene of the crash if possible, even if damage to the motor vehicle is not noticeable.
- (b) *SF 94, Statement of Witness*. This form should be completed by any witness to the crash.

§ 102–34.295 To whom do we send crash reports?

Send crash reports as follows:

- (a) If the motor vehicle is owned or commercially leased by your agency, follow your internal agency directives.
- (b) If the motor vehicle is leased from GSA Fleet, report the crash to GSA in accordance with subpart 101–39.4 of this Title.

Subpart H—Disposal of Motor Vehicles

§ 102-34.300 How do we dispose of a domestic fleet motor vehicle?

After meeting the replacement standards under subpart E of this part, you may dispose of a Government-owned domestic fleet motor vehicle. Detailed instructions for the transfer of an excess motor vehicle to another Federal agency can be found in part 102-36 of this subchapter B, information for the donation of surplus of motor vehicles can be found in part 102-37 of this subchapter B, information for the sale of motor vehicles can be found in part 102-38 of this subchapter B, and information on exchange/sale authority can be found in part 102-39 of this subchapter B.

§ 102-34.305 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

(a) SF 97, The United States Government Certificate to Obtain Title to a Motor Vehicle, if both of the following apply:

(1) The motor vehicle will be retitled by a State, Commonwealth, territory or possession of the United States or the District of Columbia; and

(2) The purchaser intends to operate the motor vehicle on highways.

NOTE TO § 102-34.305(a)(2): Do not use SF 97 if the Government-owned motor vehicle is either not designed or not legal for operation on highways. Examples are construction equipment, farm machinery, and certain military-design motor vehicles and motor vehicles that are damaged beyond repair in crashes and intended to be sold as salvage only. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip—Sale of Government Personal Property, and SF 114C, Sale of Government Property—Bid and Award.

(b) SF 97 is optional for foreign fleet motor vehicles because foreign governments may require the use of other forms.

NOTE TO § 102-34.305: The original SF 97 is printed on secure paper to identify readily any attempt to alter the form. The form is also pre-numbered to prevent duplicates. State motor vehicle agencies may reject certificates showing erasures or strikeovers.

§ 102-34.310 How do we distribute the completed Standard Form 97?

SF 97 is a 4-part set printed on continuous-feed paper. Distribute the form as follows:

(a) Original SF 97 to the purchaser or donee;

(b) One copy to the owning agency;

(c) One copy to the contracting officer making the sale or transfer of the motor vehicle; and

(d) One copy under owning agency directives.

Subpart I—Motor Vehicle Fueling

§ 102-34.315 How do we obtain fuel for Government motor vehicles?

You may obtain fuel for Government motor vehicles by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency, if permitted by your agency. You must use the method prescribed by GSA Fleet to obtain fuel for vehicles leased from GSA fleet.

§ 102-34.320 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?

(a) You may use a fleet charge card specifically issued for this purpose. These cards are designed to collect motor vehicle data at the time of purchase. Where appropriate, State sales and motor fuel taxes may be deducted from fuel purchases by the fleet charge card services contractor before your agency is billed; otherwise you may need to request reimbursement from each State to which taxes were paid. The GSA contractor issued fleet charge card is the only Government-issued charge card that may be used for GSA Fleet motor vehicles. For further information on acquiring these fleet charge cards and their use, contact the: General Services Administration, ATTN: GSA SmartPay® (QMB), 2200 Crystal Drive, Arlington, VA 22202.

(b) You may use a Government purchase card if you do not have a fleet charge card or if the use of such a Government purchase card is required by your agency mission. However, the

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Government purchase card does not collect motor vehicle data nor does it deduct State sales and motor fuel taxes.

NOTE TO §102-34.320: OMB Circular A-123, Appendix B, contains additional specific guidance on the management, issuance, and usage of Government charge cards. The Appendix B guidance consolidates and updates current Governmentwide charge card program requirements and guidance issued by the Office of Management and Budget, GSA, Department of the Treasury, and other Federal agencies. Appendix B provides a single document to incorporate changes, new guidance, or amendments to existing guidance, and establishes minimum requirements and suggested best practices for Government charge card programs that may be supplemented by individual agency policy procedures.

§ 102–34.325 What type of fuel do I use in Government motor vehicles?

(a) Use the minimum grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling Government motor vehicles, unless a higher grade of fuel is all that is available locally.

(b) Use unleaded gasoline in all foreign fleet motor vehicles designed to operate on gasoline unless:

(1) Such use would be in conflict with country-to-country or multi-national logistics agreements; or

(2) Such gasoline is not available locally.

(c) You must use alternative fuels in alternative fuel motor vehicles to the fullest extent possible as directed by regulations issued by the Department of Energy implementing the Energy Policy Act and related Executive Orders.

Subpart J—Federal Fleet Report

§ 102–34.330 What is the Federal Fleet Report?

The Federal Fleet Report (FFR) is an annual summary of Federal fleet statistics based upon fleet composition at the end of each fiscal year and vehicle use and cost during the fiscal year. The FFR is compiled by GSA from information submitted by Federal agencies. The FFR is designed to provide essential statistical data for worldwide Federal motor vehicle fleet operations. Review of the report assists Government

agencies, including GSA, in evaluating the effectiveness of the operation and management of individual fleets to determine whether vehicles are being utilized properly and to identify high cost areas where fleet expenses can be reduced. The FFR is posted on GSA's Motor Vehicle Management Policy Internet Web site (<http://www.gsa.gov/vehiclepolicy>).

§ 102–34.335 How do I submit information to the General Services Administration (GSA) for the Federal Fleet Report (FFR)?

(a) Annually, agencies must submit to GSA the information needed to produce the FFR through the Federal Automotive Statistical Tool (FAST), an Internet-based reporting tool. To find out how to submit motor vehicle data to GSA through FAST, consult the instructions from your agency fleet manager and read the documentation at <http://fastweb.inel.gov/>.

(b) Specific reporting categories, by agency, included in the FFR are—

- (1) Inventory;
- (2) Acquisitions;
- (3) Operating costs;
- (4) Miles traveled; and
- (5) Fuel used.

NOTE TO §102-34.335: The FAST system is also used by agency Fleet Managers to provide the Department of Energy with information required by the Energy Policy Act and related Executive Orders. In addition, the Office of Management and Budget (OMB) requires agency Fleet Managers and budget officers to submit annual agency motor vehicle budgeting information to OMB through FAST (see OMB Circular A-11, Preparation, Submission, and Execution of the Budget).

§ 102–34.340 Do we need a fleet management information system?

Yes, you must have a fleet management information system at the department or agency level that —

(a) Identifies and collects accurate inventory, cost, and use data that covers the complete lifecycle of each motor vehicle (acquisition, operation, maintenance, and disposal); and

(b) Provides the information necessary to satisfy both internal and external reporting requirements, including:

- (1) Cost per mile;
- (2) Fuel costs for each motor vehicle; and

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(3) Data required for FAST (see § 102-34.335).

§ 102-34.345 What records do we need to keep?

You are responsible for developing and keeping adequate accounting and reporting procedures for Government motor vehicles. These will ensure accurate recording of inventory, cost, and operational data needed to manage and control motor vehicles, and will satisfy reporting requirements. You must also comply with the General Records Schedules issued by the National Archives and Records Administration (<http://www.archives.gov>).

Subpart K—Forms

§ 102-34.350 How do we obtain the forms prescribed in this part?

See § 102-2.135 of this chapter for how to obtain forms prescribed in this part.

PART 102-35—DISPOSITION OF PERSONAL PROPERTY

Sec.

102-35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

102-35.10 How are these regulations for the disposal of personal property organized?

102-35.15 What are the goals of GSA's personal property regulations?

102-35.20 What definitions apply to GSA's personal property regulations?

102-35.25 What management reports must we provide?

102-35.30 What actions must I take or am I authorized to take regardless of the property disposition method?

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 72 FR 10085, Mar. 7, 2007, unless otherwise noted.

§ 102-35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

The General Services Administration's personal property disposal regulations are contained in this part and in parts 102-36 through 102-42 of this subchapter B as well as in parts 101-42 and 101-45 of the Federal Property Management Regulations (FPMR)(41 CFR parts 101-42 and 101-45). With two exceptions, these regulations cover the

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disposal of personal property under the custody and control of executive agencies located in the United States, the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. The exceptions to this coverage are part 102-39 of this subchapter B, which applies to the replacement of all property owned by executive agencies worldwide using the exchange/sale authority, and §§ 102-36.380 through 102-36.400, which apply to the disposal of excess property located in countries and areas not listed in this subpart, i.e., foreign excess personal property. The legislative and judicial branches are encouraged to follow these provisions for property in their custody and control.

§ 102-35.10 How are these regulations for the disposal of personal property organized?

The General Services Administration (GSA) has divided its regulations for the disposal of personal property into the following program areas:

(a) Disposition of excess personal property (part 102-36 of this subchapter B).

(b) Donation of surplus personal property (part 102-37 of this subchapter B).

(c) Sale of surplus personal property (part 102-38 of this subchapter B).

(d) Replacement of personal property pursuant to the exchange/sale authority (part 102-39 of this subchapter B).

(e) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 102-41 of this subchapter B).

(f) Utilization, donation, and disposal of foreign gifts and decorations (part 102-42 of this subchapter B).

(g) Utilization and disposal of hazardous materials and certain categories of property (part 101-42 of the Federal Property Management Regulations (FPMR), 41 CFR part 101-42).

§ 102-35.15 What are the goals of GSA's personal property regulations?

The goals of GSA's personal property regulations are to:

(a) Improve the identification and reporting of excess personal property;

(b) Maximize the use of excess property as the first source of supply to minimize expenditures for the purchase of new property, when practicable;

NOTE TO §102-35.15(b): If there are competing requests among Federal agencies for excess property, preference will be given to agencies where the transfer will avoid a new Federal procurement. A transfer to an agency where the agency will provide the property to a non-Federal entity for the non-Federal entity's use will be secondary to Federal use.

(c) Achieve maximum public benefit from the use of Government property through the donation of surplus personal property to State and local public agencies and other eligible non-Federal recipients;

(d) Obtain the optimum monetary return to the Government for surplus personal property sold and personal property sold under the exchange/sale authority; and

(e) Reduce management and inventory costs by appropriate use of the abandonment/destruction authority to dispose of unneeded personal property that has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated sales proceeds (see FMR §§ 102-36.305 through 102-36.330).

§ 102-35.20 What definitions apply to GSA's personal property regulations?

The following are definitions of, or cross-references to, some key terms that apply to GSA's personal property regulations in the FMR (CFR parts 102-36 through 102-42). Other personal property terms are defined in the sections or parts to which they primarily apply.

Accountable Personal Property includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property.

Accountability means the ability to account for personal property by providing a complete audit trail for property transactions from receipt to final disposition.

Acquisition cost means the original purchase price of an item.

Capitalized Personal Property includes property that is entered on the agency's general ledger records as a major investment or asset. An agency must determine its capitalization thresholds as discussed in Financial Accounting Standard Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 6 Accounting for Property, Plant and Equipment, Chapter 1, paragraph 13.

Control means the ongoing function of maintaining physical oversight and surveillance of personal property throughout its complete life cycle using various property management tools and techniques taking into account the environment in which the property is located and its vulnerability to theft, waste, fraud, or abuse.

Excess personal property (see § 102-36.40 of this subchapter B).

Exchange/sale (see § 102-39.20 of this subchapter B).

Executive agency (see § 102-36.40 of this subchapter B).

Federal agency (see § 102-36.40 of this subchapter B).

Foreign gifts and decorations (for the definition of relevant terms, see § 102-42.10 of this subchapter B).

Forfeited property (see § 102-41.20 of this subchapter B).

Inventory includes a formal listing of all accountable property items assigned to an agency, along with a formal process to verify the condition, location, and quantity of such items. This term may also be used as a verb to indicate the actions leading to the development of a listing. In this sense, an inventory must be conducted using an actual physical count, electronic means, and/or statistical methods.

National property management officer means an official, designated in accordance with § 102-36.45(b) of this subchapter B, who is responsible for ensuring effective acquisition, use, and disposal of excess property within your agency.

Personal property (see § 102-36.40 of this subchapter B).

Property management means the system of acquiring, maintaining, using and disposing of the personal property of an organization or entity.

Seized property means personal property that has been confiscated by a

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Federal agency, and whose care and handling will be the responsibility of that agency until final ownership is determined by the judicial process.

Sensitive Personal Property includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs.

Surplus personal property (see § 102-37.25 of this subchapter B).

Utilization means the identification, reporting, and transfer of excess personal property among Federal agencies.

§ 102-35.25 What management reports must we provide?

(a) There are three reports that must be provided. The report summarizing the property provided to non-Federal recipients and the report summarizing exchange/sale transactions (see §§ 102-36.295 and 102-39.75 respectively of this subchapter B) must be provided every year (negative reports are required). In addition, if you conduct negotiated sales of surplus personal property valued over \$5,000 in any year, you must report this transaction in accordance with § 102-38.115 (negative reports are not required for this report).

(b) The General Services Administration (GSA) may request other reports as authorized by 40 U.S.C. 506(a)(1)(A).

§ 102-35.30 What actions must I take or am I authorized to take regardless of the property disposition method?

Regardless of the disposition method used:

(a) You must maintain property in a safe, secure, and cost-effective manner until final disposition.

(b) You have authority to use the abandonment/ destruction provisions at any stage of the disposal process (see §§ 102-36.305 through 102-36.330 and § 102-38.70 of this subchapter B).

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(c) You must implement policies and procedures to remove sensitive or classified information from property prior to disposal. Agency-affixed markings should be removed, if at all possible, prior to personal property permanently leaving your agency's control.

(d) Government-owned personal property may only be used as authorized by your agency. Title to Government-owned personal property cannot be transferred to a non-Federal entity unless through official procedures specifically authorized by law.

PART 102-36—DISPOSITION OF EXCESS PERSONAL PROPERTY

Subpart A—General Provisions

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102-36.5 What is the governing authority for this part?

102-36.10 What does this part cover?

102-36.15 Who must comply with the provisions of this part?

102-36.20 To whom do “we”, “you”, and their variants refer?

102-36.25 How do we request a deviation from these requirements and who can approve it?

102-36.30 When is personal property excess?

102-36.35 What is the typical process for disposing of excess personal property?

DEFINITIONS

102-36.40 What definitions apply to this part?

RESPONSIBILITY

102-36.45 What are our responsibilities in the management of excess personal property?

102-36.50 May we use a contractor to perform the functions of excess personal property disposal?

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Subpart B—Acquiring Excess Personal Property For Our Agency

ACQUIRING EXCESS

102-36.60 Who is eligible to acquire excess personal property as authorized by the Property Act?

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102-36.70 What must we consider when acquiring excess personal property?

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102-36.80 How much do we pay for excess personal property on a transfer with reimbursement?

102-36.85 Do we pay for personal property we acquire when it is disposed of by another agency under the exchange/sale authority, and how much do we pay?

SCREENING OF EXCESS

102-36.90 How do we find out what personal property is available as excess?

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102-36.100 When does the screening period start for excess personal property?

102-36.105 Who is authorized to screen and where do we go to screen excess personal property on-site?

102-36.110 Do we need authorization to screen excess personal property?

102-36.115 What information must we include in the authorization form for non-federal persons to screen excess personal property?

102-36.120 What are our responsibilities in authorizing a non-federal individual to screen excess personal property?

PROCESSING TRANSFERS

102-36.125 How do we process a Standard Form 122 (SF 122), Transfer Order Excess Personal Property, through GSA?

102-36.130 What are our responsibilities in processing transfer orders of excess personal property?

102-36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

102-36.140 May we arrange to have the excess personal property shipped to its final destination?

DIRECT TRANSFERS

102-36.145 May we obtain excess personal property directly from another federal agency without GSA approval?

Subpart C—Acquiring Excess Personal Property for Non-federal Recipients

102-36.150 For which non-federal activities may we acquire excess personal property?

102-36.155 What are our responsibilities when acquiring excess personal property for use by a non-federal recipient?

102-36.160 What additional information must we provide on the SF 122 when acquiring excess personal property for non-federal recipients?

NON-APPROPRIATED FUND ACTIVITIES

102-36.165 Do we retain title to excess personal property furnished to a non-appropriated fund activity within our agency?

102-36.170 May we transfer personal property owned by one of our non-appropriated fund activities?

CONTRACTORS

102-36.175 Are there restrictions to acquiring excess personal property for use by our contractors?

COOPERATIVES

102-36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperatives?

PROJECT GRANTEES

102-36.185 What are the requirements for acquiring excess personal property for use by our grantees?

102-36.190 Must we always pay 25 percent of the original acquisition cost when furnishing excess personal property to project grantees?

102-36.195 What type of excess personal property may we furnish to our project grantees?

102-36.200 May we acquire excess personal property for cannibalization purposes by the grantee?

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Subpart D—Disposition of Excess Personal Property

102-36.210 Why must we report excess personal property to GSA?

REPORTING EXCESS PERSONAL PROPERTY

102-36.215 How do we report excess personal property?

102-36.220 Must we report all excess personal property to GSA?

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102-36.230 Where do we send the reports of excess personal property?

102-36.235 What information do we provide when reporting excess personal property?

102-36.240 What are the disposal condition codes?

DISPOSING OF EXCESS PERSONAL PROPERTY

102-36.245 Are we accountable for the personal property that has been reported excess, and who is responsible for the care and handling costs?

102-36.250 Does GSA ever take physical custody of excess personal property?

102-36.255 What options do we have when unusual circumstances do not allow adequate time for disposal through GSA?

102-36.260 How do we promote the expeditious transfer of excess personal property?

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- 102-36.265 What if there are competing requests for the same excess personal property?
- 102-36.270 What if a federal agency requests personal property that is undergoing donation screening or in the sales process?
- 102-36.275 May we dispose of excess personal property without GSA approval?
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REPORT OF DISPOSAL ACTIVITY

- 102-36.295 Is there any reporting requirement on the disposition of excess personal property?
- 102-36.300 How do we report the furnishing of personal property to non-federal recipients?

ABANDONMENT/DESTRUCTION

- 102-36.305 May we abandon or destroy excess personal property without reporting it to GSA?
- 102-36.310 Who makes the determination to abandon or destroy excess personal property?
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- 102-36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?
- 102-36.325 What must be done before the abandonment/destruction of excess personal property?
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Subpart E—Personal Property Whose Disposal Requires Special Handling

- 102-36.335 Are there certain types of excess personal property that must be disposed of differently from normal disposal procedures?

AIRCRAFT AND AIRCRAFT PARTS

- 102-36.340 What must we do when disposing of excess aircraft?
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CANINES, LAW ENFORCEMENT

- 102-36.365 May we transfer or donate canines that have been used in the performance of law enforcement duties?

DISASTER RELIEF PROPERTY

- 102-36.370 Are there special requirements concerning the use of excess personal property for disaster relief?

FIREARMS

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FOREIGN EXCESS PERSONAL PROPERTY

- 102-36.380 Who is responsible for disposing of foreign excess personal property?
- 102-36.385 What are our responsibilities in the disposal of foreign excess personal property?
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GIFTS

- 102-36.405 May we keep gifts given to us from the public?
- 102-36.410 How do we dispose of a gift in the form of money or intangible personal property?
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HAZARDOUS PERSONAL PROPERTY

- 102-36.425 May we dispose of excess hazardous personal property?

MUNITIONS LIST ITEMS/COMMERCE CONTROL LIST ITEMS (MLIs/CCLIs)

- 102-36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?
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PRINTING EQUIPMENT AND SUPPLIES

- 102-36.440 Are there special procedures for reporting excess printing and binding equipment and supplies?

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RED CROSS PROPERTY

102-36.445 Do we report excess personal property originally acquired from or through the American National Red Cross?

SHELF-LIFE ITEMS

102-36.450 Do we report excess shelf-life items?
102-36.455 How do we report excess shelf-life items?
102-36.460 Do we report excess medical shelf-life items held for national emergency purposes?
102-36.465 May we transfer or exchange excess medical shelf-life items with other Federal agencies?

VESSELS

102-36.470 What must we do when disposing of excess vessels?

Subpart F—Miscellaneous Disposition

102-36.475 What is the authority for transfers under “Computers for Learning”?

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 65 FR 31218, May 16, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 102-36.5 What is the governing authority for this part?

Section 121(c) of title 40, United States Code, authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under subtitle I of title 40. Section 521 of title 40 authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

[71 FR 53571, Sept. 12, 2006]

§ 102-36.10 What does this part cover?

This part covers the acquisition, transfer, and disposal, by executive agencies, of excess personal property located in the United States, the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

§ 102-36.15 Who must comply with the provisions of this part?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to report and transfer excess personal property and fill their personal property requirements from excess in accordance with these provisions.

§ 102-36.20 To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this part refer to the agency.

§ 102-36.25 How do we request a deviation from these requirements and who can approve it?

See §§102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of this part.

§ 102-36.30 When is personal property excess?

Personal property is excess when it is no longer needed by the activities within your agency to carry out the functions of official programs, as determined by the agency head or designee.

§ 102-36.35 What is the typical process for disposing of excess personal property?

(a) You must ensure personal property not needed by your activity is offered for use elsewhere within your agency. If the property is no longer needed by any activity within your agency, your agency declares the property excess and reports it to GSA for possible transfer to eligible recipients, including federal agencies for direct use or for use by their contractors, project grantees, or cooperative agreement recipients. All executive agencies must, to the maximum extent practicable, fill requirements for personal property by using existing agency property or by obtaining excess property from other federal agencies in lieu of new procurements.

(b) If GSA determines that there are no federal requirements for your excess personal property, it becomes surplus property and is available for donation to state and local public agencies and other eligible non-federal activities.

Title 40 of the United States Code requires that surplus personal property be distributed to eligible recipients by an agency established by each State for this purpose, the State Agency for Surplus Property.

(c) Surplus personal property not selected for donation is offered for sale to the public by competitive offerings such as sealed bid sales, spot bid sales, or auctions. You may conduct or contract for the sale of your surplus personal property, or have GSA or another executive agency conduct the sale on behalf of your agency in accordance with part 102-38 of this chapter. You must inform GSA at the time the property is reported as excess if you do not want GSA to conduct the sale for you.

(d) If a written determination is made that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

DEFINITIONS

§ 102-36.40 What definitions apply to this part?

The following definitions apply to this part:

Commerce Control List Items (CCLIs) are dual use (commercial/military) items that are subject to export control by the Bureau of Export Administration, Department of Commerce. These items have been identified in the U.S. Export Administration Regulations (15 CFR part 774) as export controlled for reasons of national security, crime control, technology transfer, and scarcity of materials.

Cooperative means the organization or entity that has a cooperative agreement with a federal agency.

Cooperative agreement means a legal instrument reflecting a relationship between a federal agency and a non-federal recipient, made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301-6308), under any or all of the following circumstances:

(1) The purpose of the relationship is the transfer, between a federal agency and a non-federal entity, of money, property, services, or anything of value to accomplish a public purpose authorized by law, rather than by purchase, lease, or barter, for the direct benefit or use of the federal government.

(2) Substantial involvement is anticipated between the federal agency and the cooperative during the performance of the agreed upon activity.

(3) The cooperative is a state or local government entity or any person or organization authorized to receive federal assistance or procurement contracts.

Demilitarization means, as defined by the Department of Defense, the act of destroying the military capabilities inherent in certain types of equipment or material. Such destruction may include deep sea dumping, mutilation, cutting, crushing, scrapping, melting, burning, or alteration so as to prevent the further use of the item for its originally intended purpose.

Excess personal property means any personal property under the control of any federal agency that is no longer required for that agency's needs, as determined by the agency head or designee.

Exchange/sale property is property not excess to the needs of the holding agency but eligible for replacement, which is exchanged or sold under the provisions of part 102-39 of this chapter in order to apply the exchange allowance or proceeds of sale in whole or part payment for replacement with a similar item.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned government corporation.

Fair market value means the best estimate of the gross sales proceeds if the property were to be sold in a public sale.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

Flight Safety Critical Aircraft Part (FSCAP) is any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in engine shut-down or loss or serious damage to the aircraft resulting in an unsafe condition.

Foreign excess personal property is any U.S. owned excess personal property located outside the United States (U.S.), the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands.

Grant means a type of assistance award and a legal instrument which permits a federal agency to transfer money, property, services or other things of value to a grantee when no substantial involvement is anticipated between the agency and the recipient during the performance of the contemplated activity.

GSAXcess[®] is GSA's website for reporting, searching and selecting excess personal property. For information on using GSAXcess[®], access <http://www.gsaxcess.gov>.

Hazardous personal property means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601-2609).

Holding agency means the federal agency having accountability for, and generally possession of, the property involved.

Intangible personal property means personal property in which the existence and value of the property is generally represented by a descriptive document rather than the property itself. Some examples are patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, and shares of stock.

Life-limited aircraft part is an aircraft part that has a finite service life expressed in either total operating hours, total cycles, and/or calendar time.

Line item means a single line entry, on a reporting form or transfer order, for items of property of the same type having the same description, condition code, and unit cost.

Munitions List Items (MLIs) are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State.

Nonappropriated fund activity means an activity or entity that is not funded by money appropriated from the general fund of the U.S. Treasury, such as post exchanges, ship stores, military officers' clubs, veterans' canteens, and similar activities. Such property is not federal property.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the federal government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

Project grant means a grant made for a specific purpose and with a specific termination date.

Public agency means any State, political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multi-jurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Related personal property means any personal property that is an integral part of real property. It is:

(1) Related to, designed for, or specifically adapted to the functional capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property; or

(2) Determined by the Administrator of General Services to be related to the real property.

Salvage means property that has value greater than its basic material content but for which repair or rehabilitation is clearly impractical and/or uneconomical.

Scrap means property that has no value except for its basic material content.

Screening period means the period in which excess and surplus personal property are made available for excess transfer or surplus donation to eligible recipients.

Shelf-life item is any item that deteriorates over time or has unstable characteristics such that a storage period must be assigned to assure the item is issued within that period to provide satisfactory performance. Management of such items is governed by part 101-27, subpart 27.2, of this title and by DOD instructions, for executive agencies and DOD respectively.

Surplus personal property (surplus) means excess personal property no longer required by the Federal agencies as determined by GSA.

Surplus release date means the date when federal screening has been completed and the excess property becomes surplus.

Transfer with reimbursement means a transfer of excess personal property between Federal agencies where the recipient is required to pay, i.e. reimburse the holding agency, for the property.

Unit cost means the original acquisition cost of a single item of property.

United States means all the 50 States and the District of Columbia.

Vessels means ships, boats and craft designed for navigation in and on the water, propelled by oars or paddles, sail, or power.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

RESPONSIBILITY

§ 102-36.45 What are our responsibilities in the management of excess personal property?

(a) Agency procurement policies should require consideration of excess personal property before authorizing procurement of new personal property.

(b) You are encouraged to designate national and regional property management officials to:

(1) Promote the use of available excess personal property to the maximum extent practicable by your agency.

(2) Review and approve the acquisition and disposal of excess personal property.

(3) Ensure that any agency implementing procedures comply with this part.

(c) When acquiring excess personal property, you must:

(1) Limit the quantity acquired to that which is needed to adequately perform the function necessary to support the mission of your agency.

(2) Establish controls over the processing of excess personal property transfer orders.

(3) Facilitate the timely pickup of acquired excess personal property from the holding agency.

(d) While excess personal property you have acquired is in your custody, or the custody of your non-Federal recipients and the government retains title, you and/or the non-Federal recipient must do the following:

(1) Establish and maintain a system for property accountability.

(2) Protect the property against hazards including but not limited to fire, theft, vandalism, and weather.

(3) Perform the care and handling of personal property. "Care and handling" includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting excess and surplus personal property, and destroying or rendering innocuous property which is dangerous to public health or safety.

(4) Maintain appropriate inventory levels as set forth in part 101-27 of this title.

(5) Continuously monitor the personal property under your control to assure maximum use, and develop and maintain a system to prevent and detect nonuse, improper use, unauthorized disposal, or destruction of personal property.

(e) When you no longer need personal property to carry out the mission of your program, you must:

(1) Offer the property for reassignment to other activities within your agency.

(2) Promptly report excess personal property to GSA when it is no longer needed by any activity within your

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agency for further reuse by eligible recipients.

(3) Continue the care and handling of excess personal property while it goes through the disposal process.

(4) Facilitate the timely transfer of excess personal property to other federal agencies or authorized eligible recipients.

(5) Provide reasonable access to authorized personnel for inspection and removal of excess personal property.

(6) Ensure that final disposition complies with applicable environmental, health, safety, and national security regulations.

§ 102-36.50 May we use a contractor to perform the functions of excess personal property disposal?

Yes, you may use service contracts to perform disposal functions that are not inherently governmental, such as warehousing or custodial duties. You are responsible for ensuring that the contractor conforms with the requirements of Title 40 of the United States Code and the Federal Management Regulation (41 CFR chapter 102), and any other applicable statutes and regulations when performing these functions.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

§ 102-36.55 What is GSA's role in the disposition of excess personal property?

In addition to developing and issuing regulations for the management of excess personal property, GSA:

(a) Screens and offers available excess personal property to Federal agencies and eligible non-federal recipients.

(b) Approves and processes transfers of excess personal property to eligible activities.

(c) Determines the amount of reimbursement for transfers of excess personal property when appropriate.

(d) Conducts sales of surplus and exchange/sale personal property when requested by an agency.

(e) Maintains an automated system, GSAXcess®, to facilitate the reporting and transferring of excess personal property.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

Subpart B—Acquiring Excess Personal Property For Our Agency

ACQUIRING EXCESS

§ 102-36.60 Who is eligible to acquire excess personal property as authorized by the Property Act?

The following are eligible to acquire excess personal property:

(a) Federal agencies (for their own use or use by their authorized contractors, cooperatives, and project grantees).

(b) The Senate.

(c) The House of Representatives.

(d) The Architect of the Capitol and any activities under his direction.

(e) The DC Government.

(f) Mixed-ownership government corporations as defined in 31 U.S.C. 9101.

§ 102-36.65 Why must we use excess personal property instead of buying new property?

Using excess personal property to the maximum extent practicable maximizes the return on government dollars spent and minimizes expenditures for new procurement. Before purchasing new property, check with the appropriate regional GSA Personal Property Management office or access GSAXcess® for any available excess personal property that may be suitable for your needs. You must use excess personal property unless it would cause serious hardship, be impractical, or impair your operations.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.70 What must we consider when acquiring excess personal property?

Consider the following when acquiring excess personal property:

(a) There must be an authorized requirement.

(b) The cost of acquiring and maintaining the excess personal property (including packing, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new material.

(c) The sources of spare parts or repair/maintenance services to support the acquired item are readily accessible.

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(d) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(e) The excess personal property will fulfill the required need with reasonable certainty without sacrificing mission or schedule.

(f) You must not acquire excess personal property with the intent to sell or trade for other assets.

§ 102-36.75 Do we pay for excess personal property we acquire from another federal agency under a transfer?

(a) No, except for the situations listed in paragraph (b) of this section, you do not pay for the property. However, you are responsible for shipping and transportation costs. Where applicable, you may also be required to pay packing, loading, and any costs directly related to the dismantling of the property when required for the purpose of transporting the property.

(b) You may be required to reimburse the holding agency for excess personal property transferred to you (i.e., transfer with reimbursement) when:

(1) Reimbursement is directed by GSA.

(2) The property was originally acquired with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue and the holding agency requests reimbursement. It is executive branch policy that working capital fund property shall be transferred without reimbursement.

(3) The property was acquired with appropriated funds, but reimbursement is required or authorized by law.

(4) You or the holding agency is the U.S. Postal Service (USPS).

(5) You are acquiring excess personal property for use by a project grantee that is a public agency or a nonprofit organization and exempt from taxation under 26 U.S.C. 501.

(6) You or the holding agency is the DC Government.

(7) You or the holding agency is a wholly owned or mixed-ownership government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101-9110).

41 CFR Ch. 102 (7-1-11 Edition)

§ 102-36.80 How much do we pay for excess personal property on a transfer with reimbursement?

(a) You may be required to reimburse the holding agency the fair market value when the transfer involves any of the conditions in § 102-36.75(b)(1) through (b)(4).

(b) When acquiring excess personal property for your project grantees (§ 102-36.75(b)(5)), you are required to deposit into the miscellaneous receipts fund of the U.S. Treasury an amount equal to 25 percent of the original acquisition cost of the property, except for transfers under the conditions cited in § 102-36.190.

(c) When you or the holding agency is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102-36.75(b)(6) or (b)(7)), you are required to reimburse the holding agency using fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (i.e., condition code 1), and zero percent for other personal property. Where circumstances warrant, a higher fair value may be used if the agencies concerned agree. Due to special circumstances or the unusual nature of the property, the holding agency may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

§ 102-36.85 Do we pay for personal property we acquire when it is disposed of by another agency under the exchange/sale authority, and how much do we pay?

Yes, you must pay for personal property disposed of under the exchange/sale authority, in the amount required by the holding agency. The amount of reimbursement is normally the fair market value.

SCREENING OF EXCESS

§ 102-36.90 How do we find out what personal property is available as excess?

You may use the following methods to find out what excess personal property is available:

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(a) Check GSAXcess®, GSA's website for searching and selecting excess personal property. For information on GSAXcess®, access <http://www.gsaxcess.gov>.

(b) Contact or submit want lists to regional GSA Personal Property Management offices.

(c) Check any available holding agency websites.

(d) Conduct on-site screening at various federal facilities.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.95 How long is excess personal property available for screening?

The screening period for excess personal property is normally 21 calendar days. GSA may extend or shorten the screening period in coordination with the holding agency. For screening timeframes for government property in the possession of contractors see the Federal Acquisition Regulation (48 CFR part 45).

§ 102-36.100 When does the screening period start for excess personal property?

Screening starts when GSA receives the report of excess personal property (see § 102-36.230).

§ 102-36.105 Who is authorized to screen and where do we go to screen excess personal property on-site?

You may authorize your agency employees, contractors, or non-federal recipients that you sponsor to screen excess personal property. You may visit Defense Reutilization and Marketing Offices (DRMOs) and DOD contractor facilities to screen excess personal property generated by the Department of Defense. You may also inspect excess personal property at various civilian agency facilities throughout the United States.

§ 102-36.110 Do we need authorization to screen excess personal property?

(a) Yes, when entering a federal facility, federal agency employees must present a valid Federal ID. Non-federal individuals will need proof of authorization from their sponsoring federal

agency in addition to a valid picture identification.

(b) Entry on some federal and contractor facilities may require special authorization from that facility. Persons wishing to screen excess personal property on such a facility must obtain approval from that agency. Contact your regional GSA Personal Property Management office for locations and accessibility.

§ 102-36.115 What information must we include in the authorization form for non-federal persons to screen excess personal property?

(a) For non-federal persons to screen excess personal property, you must provide on the authorization form:

(1) The individual's name and the organization he/she represents;

(2) The period of time and location(s) in which screening will be conducted; and

(3) The number and completion date of the applicable contract, cooperative agreement, or grant.

(b) An authorized official of your agency must sign the authorization form.

§ 102-36.120 What are our responsibilities in authorizing a non-federal individual to screen excess personal property?

You must do the following:

(a) Ensure that the non-federal screener certifies that any and all property requested will be used for authorized official purpose(s).

(b) Maintain a record of the authorized screeners under your authority, to include names, addresses and telephone numbers, and any additional identifying information such as driver's license or social security numbers.

(c) Retrieve any expired or invalid screener's authorization forms.

PROCESSING TRANSFERS

§ 102-36.125 How do we process a Standard Form 122 (SF 122), Transfer Order Excess Personal Property, through GSA?

(a) You must first contact the appropriate regional GSA Personal Property Management office to assure the property is available to you. Submit your

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request on a SF 122, Transfer Order Excess Personal Property, to the region in which the property is located. For the types of property listed in the table in paragraph (b) of this section, submit the SF 122 to the corresponding GSA regions. You may submit the SF 122 manually or transmit the required information by electronic media (GSAXcess®) or any other transfer form specified and approved by GSA.

(b) For the following types of property, you must submit the SF 122 to the corresponding GSA regions:

Type of property	GSA region	Location
Aircraft	9 FBP	San Francisco, CA 94102.
Firearms	7 FP-8	Denver, CO 80225.
Foreign Gifts	FBP	Washington, DC 20406.
Forfeited Property	3 FP	Washington, DC 20407.
Standard Forms ...	7 FMP	Ft. Worth, TX 76102.
Vessels, civilian ...	4 FD	Atlanta, GA 30365.
Vessels, DOD	3 FPD	Philadelphia, PA 19107.

[65 FR 31218, May 16, 2000; 65 FR 33889, May 25, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.130 What are our responsibilities in processing transfer orders of excess personal property?

Whether the excess is for your use or for use by a non-federal recipient that you sponsor, you must:

(a) Ensure that only authorized federal officials of your agency sign the SF 122 prior to submission to GSA for approval.

(b) Ensure that excess personal property approved for transfer is used for authorized official purpose(s).

(c) Advise GSA of names of agency officials that are authorized to approve SF 122s, and notify GSA of any changes in signatory authority.

§ 102-36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

Normally, you have 15 calendar days from the date of GSA allocation to pick up the excess personal property for transfer, and you are responsible for scheduling and coordinating the property removal with the holding agency. If additional removal time is required, you are responsible for requesting such additional removal time.

[74 FR 41060, Aug. 14, 2009]

41 CFR Ch. 102 (7-1-11 Edition)

§ 102-36.140 May we arrange to have the excess personal property shipped to its final destination?

Yes, when the holding agency agrees to provide assistance in preparing the property for shipping. You may be required to pay the holding agency any direct costs in preparing the property for shipment. You must provide shipping instructions and the appropriate fund code for billing purposes on the SF 122.

DIRECT TRANSFERS

§ 102-36.145 May we obtain excess personal property directly from another Federal agency without GSA approval?

Yes, but only under the following situations:

(a) You may obtain excess personal property that has not yet been reported to GSA, provided the total acquisition cost of the excess property does not exceed \$10,000 per line item. You must ensure that a SF 122 is completed for the direct transfer and that an authorized official of your agency signs the SF 122. You must provide a copy of the SF 122 to the appropriate regional GSA office within 10 workdays from the date of the transaction.

(b) You may obtain excess personal property exceeding the \$10,000 per line item limitation, provided you first contact the appropriate regional GSA Personal Property Management office for verbal approval of a prearranged transfer. You must annotate the SF 122 with the name of the GSA approving official and the date of the verbal approval, and provide a copy of the SF 122 to GSA within 10 workdays from the date of transaction.

(c) You are subject to the requirement to pay reimbursement for the excess personal property under a direct transfer when any of the conditions in § 102-36.75(b) applies.

(d) You may obtain excess personal property directly from another federal agency without GSA approval when that federal agency has statutory authority to dispose of such excess personal property and you are an eligible recipient.

Subpart C—Acquiring Excess Personal Property for Non-Federal Recipients

§ 102–36.150 For which non-federal activities may we acquire excess personal property?

Under the Property Act you may acquire and furnish excess personal property for use by your non-appropriated fund activities, contractors, cooperatives, and project grantees. You may acquire and furnish excess personal property for use by other eligible recipients only when you have specific statutory authority to do so.

§ 102–36.155 What are our responsibilities when acquiring excess personal property for use by a non-federal recipient?

When acquiring excess personal property for use by a non-federal recipient, your authorized agency official must:

(a) Ensure the use of excess personal property by the non-federal recipient is authorized and complies with applicable federal regulations and agency guidelines.

(b) Determine that the use of excess personal property will reduce the costs to the government and/or that it is in the government's best interest to furnish excess personal property.

(c) Review and approve transfer documents for excess personal property as the sponsoring Federal agency.

(d) Ensure the non-federal recipient is aware of his obligations under the FMR and your agency regulations regarding the management of excess personal property.

(e) Ensure the non-federal recipient does not stockpile the property but places the property into use within a reasonable period of time, and has a system to prevent nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished.

(f) Establish provisions and procedures for property accountability and disposition in situations when the government retains title.

(g) Report annually to GSA excess personal property furnished to non-federal recipients during the year (see § 102–36.295).

§ 102–36.160 What additional information must we provide on the SF 122 when acquiring excess personal property for non-federal recipients?

Annotate on the SF 122, the name of the non-federal recipient and the contract, grant or agreement number, when applicable, and the scheduled completion/expiration date of the contract, grant or agreement. If the remaining time prior to the expiration date is less than 60 calendar days, you must certify that the contract, grant or agreement will be extended or renewed or provide other written justification for the transfer.

NON-APPROPRIATED FUND ACTIVITIES

§ 102–36.165 Do we retain title to excess personal property furnished to a non-appropriated fund activity within our agency?

Yes, title to excess personal property furnished to a non-appropriated fund activity remains with the Federal Government and you are accountable for establishing controls over the use of such excess property in accordance with § 102–36.45(d). When such property is no longer required by the non-appropriated fund activity, you must reuse or dispose of the property in accordance with this part.

§ 102–36.170 May we transfer personal property owned by one of our non-appropriated fund activities?

Property purchased by a non-appropriated fund activity is not federal property. A non-appropriated fund activity has the option of making its privately owned personal property available for transfer to a federal agency, usually with reimbursement. If such reimbursable personal property is not transferred to another federal agency, it may be offered for sale. Such property is not available for donation.

[65 FR 31218, May 16, 2000, as amended at 65 FR 33778, May 25, 2000]

CONTRACTORS

§ 102–36.175 Are there restrictions to acquiring excess personal property for use by our contractors?

Yes, you may acquire and furnish excess personal property for use by your contractors subject to the criteria and

restrictions in the Federal Acquisition Regulation (48 CFR part 45). When such property is no longer needed by your contractors or your agency, you must dispose of the excess personal property in accordance with the provisions of this part.

COOPERATIVES

§ 102-36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperatives?

Yes, you must limit the total dollar amount of property transfers (in terms of original acquisition cost) to the dollar value of the cooperative agreement. For any transfers in excess of such amount, you must ensure that an official of your agency at a level higher than the officer administering the agreement approves the transfer. The federal government retains title to such property, except when provided by specific statutory authority.

PROJECT GRANTEES

§ 102-36.185 What are the requirements for acquiring excess personal property for use by our grantees?

You may furnish excess personal property for use by your grantees only when:

- (a) The grantee holds a federally sponsored project grant;
- (b) The grantee is a public agency or a nonprofit tax-exempt organization under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);
- (c) The property is for use in connection with the grant; and
- (d) You pay 25 percent of the original acquisition cost of the excess personal property, such funds to be deposited into the miscellaneous receipts fund of the U.S. Treasury. Exceptions to paying this 25 percent are provided in § 102-36.190. Title to property vests in the grantee when your agency pays 25 percent of the original acquisition cost.

§ 102-36.190 Must we always pay 25 percent of the original acquisition cost when furnishing excess personal property to project grantees?

No, you may acquire excess personal property for use by a project grantee

without paying the 25 percent fee when any of the following conditions apply:

(a) The personal property was originally acquired from excess sources by your agency and has been placed into official use by your agency for at least one year. The federal government retains title to such property.

(b) The property is furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative state forest fire control programs. The federal government retains title to such property.

(c) The property is furnished by the U.S. Department of Agriculture to state or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E). The federal government retains title to such property.

(d) The property is not needed for donation under part 102-37 of this chapter, and is transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358). Title to such property transfers to the grantee. (You need not wait until after the donation screening period when furnishing excess personal property to recipients under the Agency for International Development (AID) Development Loan Program.)

(e) The property is scientific equipment transferred under section 11(e) of the National Science Foundation (NSF) Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will limit such transfers to property within Federal Supply Classification (FSC) groups 12, 14, 43, 48, 58, 59, 65, 66, 67, 68 and 70. GSA may approve transfers without reimbursement for property under other FSC groups when NSF certifies the item is a component of or related to a piece of scientific equipment or is a difficult-to-acquire item needed for scientific research. Regardless of FSC, GSA will not approve transfers of common-use or general-purpose items without reimbursement. Title to such property transfers to the grantee.

(f) The property is furnished in connection with grants to Indian tribes, as defined in section 3(c) of the Indian Financing Act (24 U.S.C. 1452(c)). Title

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passage is determined under the authorities of the administering agency.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.195 What type of excess personal property may we furnish to our project grantees?

You may furnish to your project grantees any property, except for consumable items, determined to be necessary and usable for the purpose of the grant. Consumable items are generally not transferable to project grantees. GSA may approve transfers of excess consumable items when adequate justification for the transfer accompanies such requests. For the purpose of this section, "consumable items" are items which are intended for one-time use and are actually consumed in that one time; e.g., drugs, medicines, surgical dressings, cleaning and preserving materials, and fuels.

§ 102-36.200 May we acquire excess personal property for cannibalization purposes by the grantees?

Yes, subject to GSA approval, you may acquire excess personal property for cannibalization purposes. You may be required to provide a supporting statement that indicates disassembly of the item for secondary use has greater benefit than utilization of the item in its existing form and cost savings to the government will result.

§ 102-36.205 Is there a limit to how much excess personal property we may furnish to our grantees?

Yes, you must monitor transfers of excess personal property so the total dollar amount of property transferred (in original acquisition cost) does not exceed the dollar value of the grant. Any transfers above the grant amount must be approved by an official at an administrative level higher than the officer administering the grant.

Subpart D—Disposition of Excess Personal Property

§ 102-36.210 Why must we report excess personal property to GSA?

You must report excess personal property to promote reuse by the government to enable federal agencies to

benefit from the continued use of property already paid for with taxpayers' money, thus minimizing new procurement costs. Reporting excess personal property to GSA helps assure that the information on available excess personal property is accessible and disseminated to the widest range of reuse customers.

REPORTING EXCESS PERSONAL PROPERTY

§ 102-36.215 How do we report excess personal property?

Report excess personal property as follows:

(a) Electronically submit the data elements required on the Standard Form 120 (SF 120), Report of Excess Personal Property, in a format specified and approved by GSA; or

(b) Submit a paper SF 120 to the regional GSA Personal Property Management office.

§ 102-36.220 Must we report all excess personal property to GSA?

(a) Generally yes, regardless of the condition code, except as authorized in § 102-36.145 for direct transfers or as exempted in paragraph (b) of this section. Report all excess personal property, including excess personal property to which the government holds title but is in the custody of your contractors, co-operatives, or project grantees.

(b) You are not required to report the following types of excess personal property to GSA for screening:

(1) Property determined appropriate for abandonment/destruction (see § 102-36.305).

(2) Non-appropriated fund property (see § 102-36.165).

(3) Foreign excess personal property (see § 102-36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste.

(8) Controlled substances.

(9) Nuclear Regulatory Commission-controlled materials.

(10) Property dangerous to public health and safety.

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(11) Classified items or property determined to be sensitive for reasons of national security.

(c) Refer to part 101-42 of this title for additional guidance on the disposition of classes of property under paragraphs (b)(7) through (b)(11) of this section.

§ 102-36.225 Must we report excess related personal property?

Yes, you must report excess related personal property to the Office of Real Property, GSA, in accordance with part 102-75 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.230 Where do we send the reports of excess personal property?

(a) You must direct electronic submissions of excess personal property to GSAXcess® maintained by the Property Management Division (FBP), GSA, Washington, DC 20406.

(b) For paper submissions, you must send the SF 120 to the regional GSA Personal Property Management office for the region in which the property is located. For the categories of property listed in §102-36.125(b), forward the SF 120 to the corresponding regions.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.235 What information do we provide when reporting excess personal property?

(a) You must provide the following data on excess personal property:

(1) The reporting agency and the property location.

(2) A report number (6-digit activity address code and 4-digit Julian date).

(3) 4-digit Federal Supply Class (use National Stock Number whenever available).

(4) Description of item, in sufficient detail.

(5) Quantity and unit of issue.

(6) Disposal Condition Code (see §102-36.240).

(7) Original acquisition cost per unit and total cost (use estimate if original cost not available).

(8) Manufacturer, date of manufacture, part and serial number, when required by GSA.

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(b) In addition, provide the following information on your report of excess, when applicable:

(1) Major parts/components that are missing.

(2) If repairs are needed, the type of repairs.

(3) Special requirements for handling, storage, or transportation.

(4) The required date of removal due to moving or space restrictions.

(5) If reimbursement is required, the authority under which the reimbursement is requested, the amount of reimbursement and the appropriate fund code to which money is to be deposited.

(6) If you will conduct the sale of personal property that is not transferred or donated.

§ 102-36.240 What are the disposal condition codes?

The disposal condition codes are contained in the following table:

Disposal condition code	Definition
1	New. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
4	Usable. Property which shows some wear, but can be used without significant repair.
7	Repairable. Property which is unusable in its current condition but can be economically repaired.
X	Salvage. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
S	Scrap. Property which has no value except for its basic material content.

DISPOSING OF EXCESS PERSONAL PROPERTY

§ 102-36.245 Are we accountable for the personal property that has been reported excess, and who is responsible for the care and handling costs?

Yes, you are accountable for the excess personal property until the time it is picked up by the designated recipient or its agent. You are responsible for all care and handling charges while the excess personal property is going through the screening and disposal process.

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§ 102-36.250 Does GSA ever take physical custody of excess personal property?

Generally you retain physical custody of the excess personal property prior to its final disposition. Very rarely GSA may consider accepting physical custody of excess personal property. Under special circumstances, GSA may take custody or may direct the transfer of partial or total custody to other executive agencies, with their consent.

§ 102-36.255 What options do we have when unusual circumstances do not allow adequate time for disposal through GSA?

Contact your regional GSA Personal Property Management office for any existing interagency agreements that would allow you to turn in excess personal property to a federal facility. You are responsible for any turn in costs and all costs related to transporting the excess personal property to these facilities.

§ 102-36.260 How do we promote the expeditious transfer of excess personal property?

For expeditious transfer of excess personal property you should:

(a) Provide complete and accurate property descriptions and condition codes on the report of excess to facilitate the selection of usable property by potential users.

(b) Ensure that any available operating manual, parts list, diagram, maintenance log, or other instructional publication is made available with the property at the time of transfer.

(c) Advise the designated recipient of any special requirements for dismantling, shipping/transportation.

(d) When the excess personal property is located at a facility due to be closed, provide advance notice of the scheduled date of closing, and ensure there is sufficient time for screening and removal of property.

§ 102-36.265 What if there are competing requests for the same excess personal property?

(a) GSA will generally approve transfers on a first-come, first-served basis.

When more than one federal agency requests the same item, and the quantity available is not sufficient to meet the demand of all interested agencies, GSA will consider factors such as national defense requirements, emergency needs, avoiding the necessity of a new procurement, energy conservation, transportation costs, and retention of title in the government. GSA will normally give preference to the agency that will retain title in the Government.

(b) Requests for property for the purpose of cannibalization will normally be subordinate to requests for use of the property in its existing form.

§ 102-36.270 What if a federal agency requests personal property that is undergoing donation screening or in the sales process?

Prior to final disposition, GSA will consider requests from authorized federal activities for excess personal property undergoing donation screening or in the sales process. Federal transfers may be authorized prior to removal of the property under a donation or sales action.

§ 102-36.275 May we dispose of excess personal property without GSA approval?

No, you may not dispose of excess personal property without GSA approval except under the following limited situations:

(a) You may transfer to another federal agency excess personal property that has not yet been reported to GSA, under direct transfer procedures contained in § 102-36.145.

(b) You may dispose of excess personal property that is not required to be reported to GSA (see § 102-36.220(b)).

(c) You may dispose of excess personal property without going through GSA when such disposal is authorized by law.

§ 102-36.280 May we withdraw from the disposal process excess personal property that we have reported to GSA?

Yes, you may withdraw excess personal property from the disposal process, but only with the approval of GSA

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and to satisfy an internal agency requirement. Property that has been approved for transfer or donation or offered for sale by GSA may be returned to your control with proper justification.

TRANSFERS WITH REIMBURSEMENT

§ 102-36.285 May we charge for personal property transferred to another federal agency?

(a) When any one of the following conditions applies, you may require and retain reimbursement for the excess personal property from the recipient:

(1) Your agency has the statutory authority to require and retain reimbursement for the property.

(2) You are transferring the property under the exchange/sale authority.

(3) You had originally acquired the property with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue. It is current executive branch policy that working capital fund property shall be transferred without reimbursement.

(4) You or the recipient is the U.S. Postal Service.

(5) You or the recipient is the DC Government.

(6) You or the recipient is a wholly owned or mixed-ownership government corporation.

(b) You may charge for direct costs you incurred incident to the transfer, such as packing, loading and shipping of the property. The recipient is responsible for such charges unless you waive the amount involved.

(c) You may not charge for overhead or administrative expenses or the costs for care and handling of the property pending disposition.

§ 102-36.290 How much do we charge for excess personal property on a transfer with reimbursement?

(a) You may require reimbursement in an amount up to the fair market value of the property when the transfer involves property meeting conditions in § 102-36.285(a)(1) through (a)(4).

(b) When you or the recipient is the DC Government or a wholly owned or mixed-ownership Government corpora-

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tion (§ 102-36.285(a)(5) and (a)(6)), you may only require fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (i.e., condition code 1), and zero percent for other personal property. A higher fair value may be used if you and the recipient agency agree. Due to special circumstances or the nature of the property, you may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

REPORT OF DISPOSAL ACTIVITY

§ 102-36.295 Is there any reporting requirement on the disposition of excess personal property?

Yes, you must report annually to GSA personal property furnished in any manner in that year to any non-federal recipients, with respect to property obtained as excess or as property determined to be no longer required for the purposes of the appropriation from which it was purchased.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.300 How do we report the furnishing of personal property to non-federal recipients?

(a) Submit your annual report of personal property furnished to non-federal recipients, in letter form, to GSA, Office of Travel, Transportation, and Asset Management (MT), 1800 F Street, NW, Washington, DC 20405, within 90 calendar days after the close of each fiscal year. The report must cover personal property disposed during the fiscal year in all areas within the United States, the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands. Negative reports are required.

(b) The report (interagency report control number 0154—GSA—AN) must reference this part and contain the following:

(1) Names of the non-federal recipients.

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(2) Status of the recipients (contractor, cooperative, project grantee, etc.).

(3) Total original acquisition cost of excess personal property furnished to each type of recipient, by type of property (two-digit FSC groups).

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

ABANDONMENT/DESTRUCTION

§ 102-36.305 May we abandon or destroy excess personal property without reporting it to GSA?

Yes, you may abandon or destroy excess personal property when you have made a written determination that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap).

§ 102-36.310 Who makes the determination to abandon or destroy excess personal property?

To abandon or destroy excess personal property, an authorized official of your agency makes a written finding that must be approved by a reviewing official who is not directly accountable for the property.

§ 102-36.315 Are there any restrictions to the use of the abandonment/destruction authority?

Yes, the following restrictions apply:

(a) You must not abandon or destroy property in a manner which is detrimental or dangerous to public health or safety. Additional guidelines for the abandonment/destruction of hazardous materials are prescribed in part 101-42 of this title.

(b) If you become aware of an interest from an entity in purchasing the property, you must implement sales procedures in lieu of abandonment/destruction.

§ 102-36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?

In lieu of abandonment/destruction, you may donate such excess personal

property only to a public body without going through GSA. A public body is any department, agency, special purpose district, or other instrumentality of a state or local government; any Indian tribe; or any agency of the federal government. If you become aware of an interest from an eligible non-profit organization (see part 102-37 of this chapter) that is not a public body in acquiring the property, you must contact the regional GSA Personal Property Management office and implement donation procedures in accordance with part 102-37 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.325 What must be done before the abandonment/destruction of excess personal property?

Except as provided in § 102-36.330, you must provide public notice of intent to abandon or destroy excess personal property, in a format and timeframe specified by your agency regulations (such as publishing a notice in a local newspaper, posting of signs in common use facilities available to the public, or providing bulletins on your website through the internet). You must also include in the notice an offer to sell in accordance with part 102-38 of this chapter.

§ 102-36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?

Yes, you are not required to provide public notice when:

(a) The value of the property is so little or the cost of its care and handling, pending abandonment/destruction, is so great that its retention for advertising for sale, even as scrap, is clearly not economical;

(b) Abandonment or destruction is required because of health, safety, or security reasons; or

(c) When the original acquisition cost of the item (estimated if unknown) is less than \$500.

[65 FR 31218, May 16, 2000, as amended at 65 FR 34983, June 1, 2000]

Subpart E—Personal Property Whose Disposal Requires Special Handling

Materiel Disposition Manual, DOD 4160.21-M, accessible at *www.drms.dla.mil* under “Publications.”

§ 102-36.335 Are there certain types of excess personal property that must be disposed of differently from normal disposal procedures?

Yes, you must comply with the additional provisions in this subpart when disposing of the types of personal property listed in this subpart.

AIRCRAFT AND AIRCRAFT PARTS

§ 102-36.340 What must we do when disposing of excess aircraft?

(a) You must report to GSA all excess aircraft, regardless of condition or dollar value, and provide the following information on the SF 120:

- (1) Manufacturer, date of manufacture, model, serial number.
- (2) Major components missing from the aircraft, such as engines, electronics.
- (3) Whether or not the:
 - (i) Aircraft is operational;
 - (ii) Data plate is available;
 - (iii) Historical and maintenance records are available;
 - (iv) Aircraft has been previously certified by the Federal Aviation Administration (FAA) and/or has been maintained to FAA airworthiness standards;
 - (v) Aircraft was previously used for non-flight purposes (i.e., ground training or static display), and has been subjected to extensive disassembly and re-assembly procedures for ground training, or repeated burning for fire-fighting training purposes.
- (4) For military aircraft, indicate Category A, B, or C as designated by the Department of Defense (DOD), as follows:

Category of aircraft	Description
A	Aircraft authorized for sale and exchange for commercial use.
B	Aircraft previously used for ground instruction and/or static display.
C	Aircraft that are combat configured as determined by DOD.

NOTE TO § 102-36.340(a)(4): For additional information on military aircraft see Defense

(b) When the designated transfer or donation recipient’s intended use is for non-flight purposes, you must remove and return the data plate to GSA Property Management Branch (9FBP), San Francisco, CA 94102-3434 prior to releasing the aircraft to the authorized recipient. GSA will forward the data plates to FAA.

(c) You must also submit a report of the final disposition of the aircraft to the Federal Aviation Interactive Reporting System (FAIRS) maintained by the Office of Travel, Transportation, and Asset Management (MT), GSA, 1800 F Street, NW, Washington, DC 20405. For additional instructions on reporting to FAIRS, see part 102-33 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.345 May we dispose of excess Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, you may dispose of excess FSCAP, but first you must determine whether the documentation available is adequate to allow transfer, donation, or sale of the part in accordance with part 102-33, subpart D, of this chapter. Otherwise, you must mutilate undocumented FSCAP that has no traceability to its original equipment manufacturer and dispose of it as scrap. When reporting excess FSCAP, annotate the manufacturer, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120, and ensure that all available historical and maintenance records accompany the part at the time of issue.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.350 How do we identify a FSCAP?

Any aircraft part designated as FSCAP is assigned an alpha Criticality Code, and the code is annotated on the original transfer document when you acquire the part. You must perpetuate the appropriate FSCAP Criticality Code on all personal property records. You may contact the Federal agency or

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Military service that originally owned the part for assistance in making this determination, or query DOD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) for the part. For assistance in subscribing to the FLIS service contact the FedLog Consumer Support Office, 800-351-4381.

§ 102–36.355 What are the FSCAP Criticality Codes?

The FSCAP Criticality Codes are contained in the following table:

FSCAP code	Description
E	FSCAP specially designed to be or selected as being nuclear hardened.
F	Flight Safety Critical Aircraft Part.

§ 102–36.360 How do we dispose of aircraft parts that are life-limited but have no FSCAP designation?

When disposing of life-limited aircraft parts that have no FSCAP designation, you must ensure that tags and labels, historical data, and maintenance records accompany the part on any transfers, donations or sales. For additional information regarding the disposal of life-limited parts with or without tags or documentation, refer to part 102–33 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

CANINES, LAW ENFORCEMENT

§ 102–36.365 May we transfer or donate canines that have been used in the performance of law enforcement duties?

Yes, under 40 U.S.C. 555, when the canine is no longer needed for law enforcement duties, you may donate the canine to an individual who has experience handling canines in the performance of those official duties.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

DISASTER RELIEF PROPERTY

§ 102–36.370 Are there special requirements concerning the use of excess personal property for disaster relief?

Yes, upon declaration by the President of an emergency or a major disaster, you may loan excess personal property to state and local governments, with or without compensation and prior to reporting it as excess to GSA, to alleviate suffering and damage resulting from any emergency or major disaster (Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) and Executive Order 12148 (3 CFR, 1979 Comp., p. 412), as amended). If the loan involves property that has already been reported excess to GSA, you may withdraw the item from the disposal process subject to approval by GSA. You may also withdraw excess personal property for use by your agency in providing assistance in disaster relief. You are still accountable for this property and your agency is responsible for developing agencywide procedures for recovery of such property.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

FIREARMS

§ 102–36.375 May we dispose of excess firearms?

Yes, unless you have specific statutory authority to do otherwise, excess firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. GSA may donate certain classes of surplus firearms to State and local government activities whose primary function is the enforcement of applicable federal, state, and/or local laws and whose compensated law enforcement officers have the authority to apprehend and arrest. Firearms not transferred or donated must be destroyed and sold as scrap. For additional guidance on the disposition of firearms refer to part 101–42 of this title.

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FOREIGN EXCESS PERSONAL PROPERTY

§ 102-36.380 Who is responsible for disposing of foreign excess personal property?

Your agency is responsible for disposing of your foreign excess personal property, as provided by chapter 7 of title 40 of the United States Code.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.385 What are our responsibilities in the disposal of foreign excess personal property?

When disposing of foreign excess personal property you must:

(a) Determine whether it is in the interest of the U.S. Government to return foreign excess personal property to the U.S. for further re-use or to dispose of the property overseas.

(b) Ensure that any disposal of property overseas conforms to the foreign policy of the United States and the terms and conditions of any applicable Host Nation Agreement.

(c) Ensure that, when foreign excess personal property is donated or sold overseas, donation/sales conditions include a requirement for compliance with U.S. Department of Commerce and Department of Agriculture regulations when transporting any personal property back to the U.S.

(d) Inform the U.S. State Department of any disposal of property to any foreign governments or entities.

§ 102-36.390 How may we dispose of foreign excess personal property?

To dispose of foreign excess personal property, you may:

(a) Offer the property for re-use by U.S. Federal agencies overseas;

(b) Return the property to the U.S. for re-use by eligible recipients;

(c) Sell, exchange, lease, or transfer such property for cash, credit, or other property;

(d) Donate medical materials or supplies to nonprofit medical or health organizations, including those qualified under sections 214(b) and 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2174, 2357); or

(e) Abandon, destroy or donate such property when you determine that it has no commercial value or the esti-

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mated cost of care and handling would exceed the estimated proceeds from its sale, in accordance with 40 U.S.C. 527. Abandonment, destruction or donation actions must also comply with the laws of the country in which the property is located.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.395 How may GSA assist us in disposing of foreign excess personal property?

You may request GSA's assistance in the screening of foreign excess personal property for possible re-use by eligible recipients within the U.S. GSA may, after consultation with you, designate property for return to the United States for transfer or donation purposes.

§ 102-36.400 Who pays for the transportation costs when foreign excess personal property is returned to the United States?

When foreign excess property is to be returned to the U.S. for the purpose of an approved transfer or donation under the provisions of 40 U.S.C. 521-529, 549, and 551, the Federal agency, State agency, or donee receiving the property is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

GIFTS

§ 102-36.405 May we keep gifts given to us from the public?

If your agency has gift retention authority, you may retain gifts from the public. Otherwise, you must report gifts you receive on a SF 120 to GSA. You must report gifts received from a foreign government in accordance with part 102-42 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102-36.410 How do we dispose of a gift in the form of money or intangible personal property?

Report intangible personal property to GSA, Personal Property Management Division (FBP), Washington, DC

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20406. You must not transfer or dispose of this property without prior approval of GSA. The Secretary of the Treasury will dispose of money and negotiable instruments such as bonds, notes, or other securities under the authority of 31 U.S.C. 324.

§ 102-36.415 How do we dispose of gifts other than intangible personal property?

(a) When the gift is offered with the condition that the property be sold and the proceeds used to reduce the public debt, report the gift to the regional GSA Personal Property Management office in which the property is located. GSA will convert the gift to money upon acceptance and deposit the proceeds into a special account of the U.S. Treasury.

(b) When the gift is offered with no conditions or restrictions, and your agency has gift retention authority, you may use the gift for an authorized official purpose without reporting to GSA. The property will then lose its identity as a gift and you must account for it in the same manner as Federal personal property acquired from authorized sources. When the property is no longer needed, you must report it as excess personal property to GSA.

(c) When the gift is offered with no conditions or restrictions, but your agency does not have gift retention authority, you must report it to the regional GSA Personal Property Management office. GSA will offer the property for screening for possible transfer to a federal agency or convert the gift to money and deposit the funds with U.S. Treasury. If your agency is interested in keeping the gift for an official purpose, you must annotate your interest on the SF 120 and also submit a SF 122.

§ 102-36.420 How do we dispose of gifts from foreign governments or entities?

Report foreign gifts on a SF 120 to GSA, Property Management Division (FBP), Washington, DC 20406, for possible transfer, donation or sale in accordance with the provisions of part 102-42 of this chapter.

[71 FR 53572, Sept. 12, 2006]

HAZARDOUS PERSONAL PROPERTY

§ 102-36.425 May we dispose of excess hazardous personal property?

Yes, but only in accordance with part 101-42 of this title. When reporting excess hazardous property to GSA, certify on the SF 120 that the property has been packaged and labeled as required. Annotate any special requirements for handling, storage, or use, and provide a description of the actual or potential hazard.

MUNITIONS LIST ITEMS/COMMERCE CONTROL LIST ITEMS (MLIs/CCLIs)

§ 102-36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?

You may dispose of excess MLIs/CCLIs only when you comply with the additional disposal and demilitarization (DEMIL) requirements contained in part 101-42 of this title. MLIs may require demilitarization when issued to any non-DoD entity, and will require appropriate licensing when exported from the U.S. CCLIs usually require export licensing when transported from the U.S.

§ 102-36.435 How do we identify Munitions List Items (MLIs)/Commerce Control List Items (CCLIs) requiring demilitarization?

You identify MLIs/CCLIs requiring demilitarization by the demilitarization code that is assigned to each MLI or CCLI. The code indicates the type and scope of demilitarization and/or export controls that must be accomplished, when required, before issue to any non-DOD activity. For a listing of the codes and additional guidance on DEMIL procedures see DOD Demilitarization and Trade Security Control Manual, DOD 4160.21-M-1.

PRINTING EQUIPMENT AND SUPPLIES

§ 102-36.440 Are there special procedures for reporting excess printing and binding equipment and supplies?

Yes, in accordance with 44 U.S.C. 312, you must submit reports of excess printing and binding machinery, equipment, materials, and supplies to the Public Printer, Government Printing

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Office (GPO), Customer Service Manager, 732 North Capitol Street, NW, Washington, DC 20401. If GPO has no requirement for the property, you must then submit the report to GSA.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

RED CROSS PROPERTY

§ 102-36.445 Do we report excess personal property originally acquired from or through the American National Red Cross?

Yes, when reporting excess personal property which was processed, produced, or donated by the American National Red Cross, note "RED CROSS PROPERTY" on the SF 120 or report document. GSA will offer to return this property to the Red Cross if no other federal agency has a need for it. If the Red Cross has no requirement, the property continues in the disposal process and is available for donation.

SHELF-LIFE ITEMS

§ 102-36.450 Do we report excess shelf-life items?

(a) When there are quantities on hand, that would not be utilized by the expiration date and cannot be returned to the vendor for credit, you must report such expected overage as excess for possible transfer and disposal to ensure maximum use prior to deterioration.

(b) You need not report expired shelf-life items. You may dispose of property with expired shelf-life by abandonment/destruction in accordance with §102-36.305 and in compliance with Federal, State, and local waste disposal and air and water pollution control standards.

§ 102-36.455 How do we report excess shelf-life items?

You must identify the property as shelf-life items by "SL", indicate the expiration date, whether the date is the original or an extended date, and if the date is further extendable. GSA may adjust the screening period based on re-use potential and the remaining useful shelf life.

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§ 102-36.460 Do we report excess medical shelf-life items held for national emergency purposes?

When the remaining shelf life of any medical materials or supplies held for national emergency purposes is of too short a period to justify their continued retention, you should report such property excess for possible transfer and disposal. You must make such excess determinations at such time as to ensure that sufficient time remains to permit their use before their shelf-life expires and the items are unfit for human use. You must identify such items with "MSL" and the expiration date, and indicate any specialized storage requirements.

§ 102-36.465 May we transfer or exchange excess medical shelf-life items with other federal agencies?

Yes, you may transfer or exchange excess medical shelf-life items held for national emergency purposes with any other federal agency for other medical materials or supplies, without GSA approval and without regard to part 102-39 of this chapter. You and the transferee agency will agree to the terms and prices. You may credit any proceeds derived from such transactions to your agency's current applicable appropriation and use the funds only for the purchase of medical materials or supplies for national emergency purposes.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

VESSELS

§ 102-36.470 What must we do when disposing of excess vessels?

(a) When you dispose of excess vessels, you must indicate on the SF 120 the following information:

(1) Whether the vessel has been inspected by the Coast Guard.

(2) Whether testing for hazardous materials has been done. And if so, the result of the testing, specifically the presence or absence of PCB's and asbestos and level of contamination.

(3) Whether hazardous materials clean up is required, and when it will be accomplished by your agency.

(b) In accordance with 40 U.S.C. 548, the Federal Maritime Administration (FMA), Department of Transportation,

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is responsible for disposing of surplus vessels determined to be merchant vessels or capable of conversion to merchant use and weighing 1,500 gross tons or more. The SF 120 for such vessels shall be forwarded to GSA for submission to FMA.

(c) Disposal instructions regarding vessels in this part do not apply to battleships, cruisers, aircraft carriers, destroyers, or submarines.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

Subpart F—Miscellaneous Disposition

§ 102-36.475 What is the authority for transfers under “Computers for Learning”?

(a) The Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)), authorizes federal agencies to transfer excess education-related federal equipment to educational institutions or nonprofit organizations for educational and research activities. Executive Order 12999 (3 CFR, 1996 Comp., p. 180) requires, to the extent permitted by law and where appropriate, the transfer of computer equipment for use by schools or nonprofit organizations.

(b) Each federal agency is required to identify a point of contact within the agency to assist eligible recipients, and to publicize the availability of such property to eligible communities. Excess education-related equipment may be transferred directly under established agency procedures, or reported to GSA as excess for subsequent transfer to potential eligible recipients as appropriate. You must include transfers under this authority in the annual Non-federal Recipients Report (See § 102-36.295) to GSA.

(c) The “Computers for Learning” website has been developed to streamline the transfer of excess and surplus Federal computer equipment to schools and nonprofit educational organizations. For additional information about this program access the “Computers for Learning” website, <http://www.computers.fed.gov>.

PART 102-37—DONATION OF SURPLUS PERSONAL PROPERTY

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APPENDIX C TO PART 102-37—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

AUTHORITY: 40 U.S.C. 549 and 121(c).

SOURCE: 67 FR 2584, Jan. 18, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 102-37.5 What does this part cover?

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State

includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102-37.10 What is the primary governing authority for this part?

Section 549 of title 40, United States Code, gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.15 Who must comply with the provisions of this part?

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

§ 102-37.20 How do we request a deviation from this part and who can approve it?

See §§ 102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of this part.

DEFINITIONS

§ 102-37.25 What definitions apply to this part?

The following definitions apply to this part:

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Donee means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property

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through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Holding agency means the executive agency having accountability for, and generally possession of, the property involved.

Period of restriction means the period of time for keeping donated property in use for the purpose for which it was donated.

Screening means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

Service educational activity (SEA) means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; e.g., maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

Standard Form (SF) 123, Transfer Order Surplus Personal Property means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

Surplus personal property (surplus property) means excess personal property (as defined in §102-36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

Surplus release date means the date on which Federal utilization screening of

excess personal property has been completed, and the property is available for donation.

Transferee means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

DONATION OVERVIEW

§ 102-37.30 When does property become available for donation?

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

§ 102-37.35 Who handles the donation of surplus property?

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

§ 102-37.40 What type of surplus property is available for donation?

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of

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Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(b) Property acquired with trust funds (e.g., Social Security Trust Funds).

(c) Non-appropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the GSA Office of Governmentwide Policy.

§ 102-37.45 How long is property available for donation screening?

Entities authorized to participate in the donation program may screen property, concurrently with Federal agencies, as soon as the property is reported as excess up until the surplus release date. The screening period is normally 21 calendar days, except as noted in § 102-36.95 of this chapter.

§ 102-37.50 What is the general process for requesting surplus property for donation?

The process for requesting surplus property for donation varies, depending on who is making the request.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to the appropriate GSA regional office. Requests must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property, or its electronic equivalent. Public airports must have FAA certify their transfer requests prior to submission to GSA for approval. GSA may ask SASPs or public airports to

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submit any additional information required to support and justify transfer of the property.

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part.

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency (see subpart H of this part).

§ 102-37.55 Who pays for transportation and other costs associated with a donation?

The receiving organization (the transferee) is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs, in the case of SASPs, may be passed on to donees that receive the property.

§ 102-37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

The transferee (or the transferee's agent) must remove property from the holding agency premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or removal that it no longer needs the property, it must notify the GSA regional office that approved the transfer request.

§ 102-37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

When a prospective transferee decides it cannot use surplus property that has already been approved for transfer and declines to pick it up, the GSA regional office will advise any other SASP or public airport known to be interested in the property to submit a transfer request. If there is no transfer interest, GSA will release the property for other disposal.

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§ 102-37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

When the quantity of property received doesn't agree with that approved by GSA on the SF 123, the transferee should handle the overage or shortage as follows:

If . . .	And . . .	Then . . .
(a) More property is received than was approved by GSA for transfer.	The known or estimated acquisition cost of the line item(s) involved is \$500 or more.	Submit a SF 123 for the difference to GSA (Identify the property as an overage and include the original transfer order number.) ¹
(b) Less property is received than was approved by GSA for transfer.	The acquisition cost of the missing item(s) is \$500 or more.	Submit a shortage report to GSA, with a copy to the holding agency. ¹
(c) The known or estimated acquisition cost of the property is less than \$500		Annotate on your receiving and inventory records, a description of the property, its known or estimated acquisition cost, and the name of the holding agency.

¹ Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

§ 102-37.75 What should be included in a shortage report?

The shortage report should include:

- (a) The name and address of the holding agency;
- (b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and
- (c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

§ 102-37.80 What happens to surplus property that isn't transferred for donation?

Surplus property not transferred for donation is generally offered for sale under the provisions of part 102-38 of this chapter. Under the appropriate circumstances (see § 102-36.305 of this chapter), such property might be abandoned or destroyed.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or

listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

Subpart B—General Services Administration (GSA)

§ 102-37.90 What are GSA's responsibilities in the donation of surplus property?

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

- (a) Determines when property is surplus to the needs of the Government;
- (b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;
- (c) Oversees the care and handling of surplus property while it is in the custody of a SASP;
- (d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations made by the Federal Aviation Administration (see subpart F of this part);

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(e) Donates to the American National Red Cross property (generally blood plasma and related medical materials) originally provided by the Red Cross to a Federal agency, but that has subsequently been determined surplus to Federal needs (see subpart G of this part);

(f) Approves, after consultation with the holding agency, foreign excess personal property to be returned to the United States for donation purposes;

(g) Coordinates and controls the level of SASP and donee screening at Federal installations;

(h) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102-37.455); and

(i) Keeps track of and reports on Federal donation programs (see § 102-37.105).

§ 102-37.95 How will GSA resolve competing transfer requests?

In case of requests from two or more SASPs, GSA will use the allocating criteria in § 102-37.100. When competing requests are received from public airports and SASPs, GSA will transfer property fairly and equitably, based on such factors as need, proposed use, and interest of the holding agency in having the property donated to a specific public airport.

§ 102-37.100 What factors will GSA consider in allocating surplus property among SASPs?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors:

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific service educational activity.

(c) Need and usability of property, as reflected by requests from SASPs. GSA will also give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property. (Requests for property to be used as is will be given preference over cannibalization requests.)

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(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification from the intended donee.

(e) Whether a SASP has already received similar property in the past, and how much.

(f) Past performance of a SASP in effecting timely pickup or removal of property approved for transfer and making prompt distribution of property to eligible donees.

(g) The property's condition and its original acquisition cost.

(h) Relative neediness of each State based on the State's population and per capita income.

Subpart C—Holding Agency

§ 102-37.110 What are a holding agency's responsibilities in the donation of surplus property?

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102-37.525 and § 102-42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

(c) Set aside or hold surplus property from further disposal upon notification of a pending transfer for donation; (If GSA does not notify you of a pending transfer within 5 calendar days following the surplus release date, you may proceed with the sale or other authorized disposal of the property.)

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

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(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102–37.115.

[67 FR 2584, Jan. 18, 2002, as amended at 67 FR 78732, Dec. 26, 2002]

§ 102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. However, you may not include overhead or administrative costs in these charges.

§ 102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102–37.125.

§ 102–37.125 What are some donations that do not require GSA's approval?

(a) Some donations of surplus property that do not require GSA's approval are:

- (1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102–36 of this chapter;
- (2) Donations by holding agencies to public bodies under subpart H of this part;
- (3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and
- (4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 555.

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on

your annual report to GSA under § 102–36.300 of this chapter.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

Subpart D—State Agency for Surplus Property (SASP)

§ 102–37.130 What are a SASP's responsibilities in the donation of surplus property?

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

- (1) Public agency;
- (2) Nonprofit educational or public health institution; or
- (3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102–37.135 How does a SASP become eligible to distribute surplus property to donees?

In order to receive transfers of surplus property, a SASP must:

- (a) Have a GSA-approved State plan of operation; and
- (b) Provide the certifications and agreements as set forth in §§ 102–37.200 and 102–37.205.

STATE PLAN OF OPERATION

§ 102–37.140 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102–37.145 Who is responsible for developing, certifying, and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for

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acceptance and certify that the SASP is authorized to:

- (a) Acquire and distribute property to eligible donees in the State;
- (b) Enter into cooperative agreements; and
- (c) Undertake other actions and provide other assurances as are required by 40 U.S.C. 549(e) and set forth in the plan.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of 40 U.S.C. 549(e) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of title 40 of the United States Code and the requirements of this part.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.155 When does a plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

§ 102-37.160 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102-37.165 Do plans or major amendments require public notice?

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar days to submit comments before filing the proposal.

§ 102-37.170 What happens if a SASP does not operate in accordance with its plan?

If a SASP does not operate in accordance with its plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

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SCREENING AND REQUESTING PROPERTY

§ 102-37.175 How does a SASP find out what property is potentially available for donation?

A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA's or other agencies' computerized inventory system to electronically search for property that is potentially available for donation (see §102-36.90 for information on GSA's system, FEDS).

§ 102-37.180 Does a SASP need special authorization to screen property at Federal facilities?

Yes, SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, Screener's Identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener-ID card to inspect or remove property previously set aside or approved by GSA for transfer.

§ 102-37.185 How does a SASP obtain screening authorization for itself or its donees?

(a) To obtain screening authorization for itself or donees, a SASP must submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) and a written request to the GSA regional office serving the area in which the intended screener is located. The request must:

- (1) State the prospective screener's name and the name and address of the organization he or she represents;
- (2) Specify the period of time and location(s) in which screening will be conducted; and
- (3) Certify that the applicant is qualified to screen property.

(b) If the request is approved, GSA will complete the Optional Form 92 and return it to the SASP for issuance to the screener.

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§ 102-37.205

§ 102-37.190 What records must a SASP maintain on authorized screeners?

You must maintain a current record of all individuals authorized to screen for your SASP, including their names, addresses, telephone numbers, qualifications to screen, and any additional identifying information such as driver's license or social security numbers. In the case of donee screeners, you should place such records in the donee's eligibility file and review for currency each time a periodic review of the donee's file is undertaken.

§ 102-37.195 Does a SASP have to have a donee in mind to request surplus property?

Generally yes, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102-37.200 What certifications must a SASP make when requesting surplus property for donation?

When requesting or applying for property, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under 40 U.S.C. 549 and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for the purpose of education or public health (including research for any such purpose).

(3) An eligible nonprofit activity for programs for older individuals.

(4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities,

and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA regulations, and that the property is usable and needed by the donee.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.205 What agreements must a SASP make?

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under 40 U.S.C. 549 and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful

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misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see §102-37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in §102-37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in parts 101-4, subparts 101-6.2, and 101-8.3 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, et seq.).

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.210 **Must a SASP make a drug-free workplace certification when requesting surplus property for donation?**

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace certification requirements are found at part 105-68, subpart 105-68.6, of this title.

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§ 102-37.215 **When must a SASP make a certification regarding lobbying?**

You are subject to the anti-lobbying certification and disclosure requirements in part 105-69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain surplus property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than \$100,000.

JUSTIFYING SPECIAL TRANSFER REQUESTS

§ 102-37.220 **Are there special types of surplus property that require written justification when submitting a transfer request?**

Yes, a SASP must obtain written justification from the intended donee, and submit it to GSA along with the transfer request, prior to allocation of:

(a) Aircraft and vessels covered by §102-37.455;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (see part 102-42 of this chapter);

(d) Items containing 50 parts per million or greater of polychlorinated biphenyl (see part 101-42 of this title);

(e) Firearms as described in part 101-42 of this title; and

(f) Any item on which written justification will assist GSA in making allocation to States with the greatest need.

§ 102-37.225 **What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?**

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by §102-37.455 include:

(1) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property (see §102-37.230 for information a donee has to include in the letter of intent); and

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(2) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation.

(b) For each SF 123 that GSA approves, you must include:

(1) Your distribution document, signed and dated by the authorized donee representative; and

(2) A conditional transfer document, signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102–37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?

A letter of intent for obtaining surplus aircraft or vessels must provide:

(a) A description of the aircraft or vessel requested. If the item is an aircraft, the description must include the manufacturer, date of manufacture, model, and serial number. If the item is a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of the donee's program and the number and types of aircraft or vessels it currently owns;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, the donee must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, the donee must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, disposition of unsalvageable parts, etc.) If a vessel is requested for waterway purposes, the donee must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, the donee must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft or vessel.

§ 102–37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?

When a donee wants surplus property to cannibalize, include the following statement on the SF 123: "Line Item Number(s) _____ requested for cannibalization.". In addition to including this statement, provide a detailed justification concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will approve requests for cannibalization only when it is clear from the justification that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

§ 102–37.240 How must a transfer request for surplus firearms be justified?

To justify a transfer request for surplus firearms, the requesting SASP must obtain and submit to GSA a letter of intent from the intended donee that provides:

(a) Identification of the donee applicant, including its legal name and complete address and the name, title, and telephone number of its authorized representative;

(b) The number of compensated officers with the power to apprehend and to arrest;

(c) A description of the firearm(s) requested;

(d) Details on the planned use of the firearm(s); and

(e) The number and types of donated firearms received during the previous 12 months through any other Federal program.

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CUSTODY, CARE, AND SAFEKEEPING

§ 102-37.245 What must a SASP do to safeguard surplus property in its custody?

To safeguard surplus property in your custody, you must provide adequate protection of property in your custody, including protection against the hazards of fire, theft, vandalism, and weather.

§ 102-37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?

If you learn that surplus property in your custody has been damaged or lost, you must always notify GSA and notify the appropriate law enforcement officials if a crime has been committed.

§ 102-37.255 Must a SASP insure surplus property against loss or damage?

No, you are not required to carry insurance on Federal surplus property in your custody. However, if you elect to carry insurance and the insured property is lost or damaged, you must submit a check made payable to GSA for any insurance proceeds received in excess of your actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

DISTRIBUTION OF PROPERTY

§ 102-37.260 How must a SASP document the distribution of surplus property?

All SASPs must document the distribution of Federal surplus property on forms that are prenumbered, provide for donees to indicate the primary purposes for which they are acquiring property, and include the:

(a) Certifications and agreements in §§ 102-37.200 and 102-37.205; and

(b) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

§ 102-37.265 May a SASP distribute surplus property to eligible donees of another State?

Yes, you may distribute surplus property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be

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of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement must be prepared as prescribed in § 102-37.335 and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP; and

(b) Forward copies of executed distribution documents to the donee's home SASP.

§ 102-37.270 May a SASP retain surplus property for its own use?

Yes, you can retain surplus property for use in operating the donation program, but only if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing SASP operations. GSA will notify you within 30 calendar days whether you may retain the property for use in your operations. Title to any surplus property GSA approves for your retention will vest in your SASP. You must maintain separate records for such property.

SERVICE AND HANDLING CHARGES

§ 102-37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?

No, service charge payments must readily identify the donee institution as the payer (or the name of the parent organization when that organization pays the operational expenses of the donee). Personal checks, personal cashier checks, personal money orders, and personal credit cards are not acceptable.

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§ 102-37.280 How may a SASP use service charge funds?

Funds accumulated from service charges may be deposited, invested, or used in accordance with State law to:

- (a) Cover direct and reasonable indirect costs of operating the SASP;
- (b) Purchase necessary equipment for the SASP;
- (c) Maintain a reasonable working capital reserve;
- (d) Rehabilitate surplus property, including the purchase of replacement parts;
- (e) Acquire or improve office or distribution center facilities; or
- (f) Pay for the costs of internal and external audits.

§ 102-37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

No, except as provided in § 102-37.495, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees.

DISPOSING OF UNDISTRIBUTED PROPERTY

§ 102-37.290 What must a SASP do with surplus property it cannot donate?

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether or not the property is usable.

(1) If you determine that the undistributed surplus property is not usable, you should seek GSA approval to abandon or destroy the property in accordance with § 102-37.320.

(2) If you determine that the undistributed surplus property is usable, you should immediately offer it to other SASPs. If other SASPs cannot use the property, you should promptly report it to GSA for redistribution (i.e., disposition through retransfer, sale, or other means).

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102-37.295 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA will approve or disapprove the request within 30 calendar days of receipt of the transfer order.

§ 102-37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?

When reporting unneeded usable property that is not required for transfer to another SASP, provide GSA with the:

- (a) Best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;
- (b) Date you received each line item of property listed; and
- (c) Certification of reimbursement requested under § 102-37.315.

§ 102-37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?

Yes, you may act as GSA's agent in selling undistributed surplus property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. You must notify GSA each time you propose to conduct a sale under the cooperative agreement. You may request approval to conduct a sale when reporting the property to GSA for disposal instructions. If no formal agreement exists, you may submit such an agreement at that time for approval.

§ 102-37.310 What must a proposal to sell undistributed surplus property include?

- (a) Your request to sell undistributed surplus property must include:
 - (1) The proposed sale date;
 - (2) A listing of the property;
 - (3) Location of the sale;
 - (4) Method of sale; and
 - (5) Proposed advertising to be used.
- (b) If the request is approved, the GSA regional sales office will provide

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the necessary forms and instructions for you to use in conducting the sale.

§ 102-37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?

(a) When undistributed surplus property is transferred to a Federal agency or another SASP, or disposed of by public sale, you are entitled to recoup:

(1) Direct costs you initially paid to the Federal holding agency, including but not limited to, packing, preparation for shipment, and loading. You will not be reimbursed for actions following receipt of the property, including unloading, moving, repairing, preserving, or storage.

(2) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt. You must document and certify the amount of reimbursement requested for these costs.

(b) Reimbursable arrangements should be made prior to transfer of the property. In the case of a Federal transfer, GSA will secure agreement of the Federal agency to reimburse your authorized costs, and annotate the amount of reimbursement on the transfer document. You must coordinate and make arrangements for reimbursement when property is transferred to another SASP. If you and the receiving SASP cannot agree on an appropriate reimbursement charge, GSA will determine appropriate reimbursement. The receiving SASP must annotate the reimbursement amount on the transfer document prior to its being forwarded to GSA for approval.

(c) When undistributed property is disposed of by public sale, GSA must approve the amount of sales proceeds you may receive to cover your costs. Generally, this will not exceed 50 percent of the total sales proceeds.

§ 102-37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

(a) You may abandon or destroy undistributed surplus property when you have made a written finding that the property has no commercial value or the estimated cost of its continued

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care and handling would exceed the estimated proceeds from its sale. The abandonment or destruction finding must be sent to the appropriate GSA regional office for approval. You must include in the finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons; and

(5) The signature of the SASP director requesting approval for the abandonment or destruction.

(b) GSA will notify you within 30 calendar days whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction. If GSA doesn't reply to you within 30 calendar days of notification, the property may be abandoned or destroyed.

COOPERATIVE AGREEMENTS

§ 102-37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?

Section 549(f) of title 40, United States Code allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment

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needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see §102-37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see §102-37.305).

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§102-37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

§102-37.335 May a SASP enter into a cooperative agreement with another SASP?

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate

cooperative agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of §102-37.205(e).

§102-37.340 When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

AUDITS AND REVIEWS

§102-37.345 When must a SASP be audited?

For each year in which a SASP receives \$500,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501-7507) as implemented by Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§102-37.350 Does coverage under the single audit process in OMB Circular A-133 exempt a SASP from other reviews of its program?

No, although SASPs are covered under the single audit process in OMB Circular A-133, from time to time the Government Accountability Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State

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of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.355 What obligations does a SASP have to ensure that donees meet Circular A-133 requirements?

SASPs, if they donate \$500,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A-133. If a donee receives less than \$500,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

REPORTS

§ 102-37.360 What reports must a SASP provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090-0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

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LIQUIDATING A SASP

§ 102-37.365 What steps must a SASP take if the State decides to liquidate the agency?

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

- (a) Reasons for the liquidation;
- (b) A schedule for liquidating the agency and the estimated date of termination;
- (c) Method of disposing of property on hand under the requirements of this part;
- (d) Method of disposing of the agency's physical and financial assets;
- (e) Retention of all available records of the SASP for a 2-year period following liquidation; and
- (f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

§ 102-37.370 Do liquidation plans require public notice?

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

§ 102-37.375 How is the pronoun "you" used in this subpart?

The pronoun "you," when used in this subpart, refers to the State agency for surplus property (SASP).

§ 102-37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

- (a) Section 549(d) of title 40, United States Code authorizes surplus property under the control of the Department of Defense (DOD) to be donated,

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through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102-37 as service educational activities or SEAs).

(b) Section 549(c)(3) of title 40, United States Code authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

- (1) Medical institutions.
- (2) Hospitals.
- (3) Clinics.
- (4) Health centers.
- (5) Drug abuse or alcohol treatment centers.
- (6) Providers of assistance to homeless individuals.
- (7) Providers of assistance to impoverished families and individuals.
- (8) Schools.
- (9) Colleges.
- (10) Universities.
- (11) Schools for the mentally disabled.
- (12) Schools for the physically disabled.
- (13) Child care centers.
- (14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
- (15) Museums attended by the public.
- (16) Libraries, serving free all residents of a community, district, State or region.
- (17) Historic light stations as defined under section 308(e)(2) of the National Historic Preservation Act (16 U.S.C. 470w-7(e)(2)), including a historic light station conveyed under subsection (b) of that section, notwithstanding the number of hours that the historic light station is open to the public.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006; 72 FR 12572, Mar. 16, 2007]

DONEE ELIGIBILITY

§ 102-37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

§ 102-37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

- (a) Conform to the definition of one of the categories of eligible entities listed in § 102-37.380 (see appendix C of this part for definitions);
- (b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;
- (c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;
- (d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and
- (e) Operate in compliance with applicable Federal nondiscrimination statutes.

§ 102-37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

- (a) A certificate or letter from a nationally recognized accrediting agency

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affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization.

§ 102-37.400 What type of eligibility information must a SASP maintain on donees?

In general, you must maintain the records required by your State plan to document donee eligibility (see appendix B of this part). For SEAs, you must maintain separate records that include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property that are needed or have been authorized by DOD for use in the SEA's program.

§ 102-37.405 How often must a SASP update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligi-

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bility is current and accurate. Annually, you must update files for non-profit organizations whose eligibility depends on annual appropriations, annual licensing, or annual certification. Particular care must be taken to ensure that all records relating to the authority of donee representatives to receive and receipt for property, or to screen property at Federal facilities, are current.

§ 102-37.410 What must a SASP do if a donee fails to maintain its eligibility status?

If you determine that a donee has failed to maintain its eligibility status, you must terminate distribution of property to that donee, recover any usable property still under Federal restriction (as outlined in §102-37.465), and take any other required compliance actions.

§ 102-37.415 What should a SASP do if an applicant appeals a negative eligibility determination?

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters. GSA's decision will be final.

CONDITIONAL ELIGIBILITY

§ 102-37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

You may grant conditional eligibility to such an applicant provided it submits a statement from any required approving, accrediting, or licensing authority confirming it will be approved, accredited, or licensed.

§ 102-37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?

No, under no circumstances may you grant conditional eligibility prior to receiving from the applicant a copy of

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a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code.

§ 102-37.430 What property can a SASP make available to a donee with conditional eligibility?

You may only make available surplus property that the donee can use immediately. You may not make available property that will only be used at a later date, for example, after the construction of the donee's facility has been completed.

TERMS AND CONDITIONS OF DONATION

§ 102-37.435 For what purposes may donees acquire and use surplus property?

A donee may acquire and use surplus property only for the following authorized purposes:

(a) *Public purposes.* A public agency that acquires surplus property through a SASP must use such property to carry out or to promote one or more public purposes for the people it serves.

(b) *Educational and public health purposes, including related research.* A non-profit educational or public health institution must use surplus property for education or public health, including research for either purpose and assistance to the homeless or impoverished. While this does not preclude the use of donated surplus property for a related or subsidiary purpose incident to the institution's overall program, the property may not be used for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* An entity that conducts a program for older individuals must use donated surplus property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102-37.440 May donees acquire property for exchange?

No, a donee may not acquire property with the intent to sell or trade it for other assets.

§ 102-37.445 What certifications must a donee make before receiving property?

Prior to a SASP releasing property to a donee, the donee must certify that:

(a) It is a public agency or a non-profit organization meeting the requirements of the Property Act and/or regulations of GSA;

(b) It is acquiring the property for its own use and will use the property for authorized purposes;

(c) Funds are available to pay all costs and charges incident to the donation;

(d) It will comply with the non-discrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), section 122 of title 40, United States Code, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and

(e) It isn't currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.450 What agreements must a donee make?

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an "as is, where is" basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a

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unit acquisition cost of \$5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

SPECIAL HANDLING OR USE CONDITIONS

§ 102-37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit

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acquisition cost of \$5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For . . .	See . . .
(1) Policies and procedures governing the donation of aircraft parts.	Part 102-33, subpart D, of this chapter.
(2) Documentation needed by GSA to process requests for aircraft or vessels.	§ 102-37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels.	§ 102-37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels.	§ 102-37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of the Justice, in order to acquire the property. Include the ATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101-42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the

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SASP certifying that all Federal Government markings will be obliterated before use.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.460 What special terms and conditions apply to the donation of aircraft and vessels?

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102-37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for non-flight use, the donee must, within 30 calendar days of receipt of the aircraft, turn over to the SASP the remaining aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

RELEASE OF RESTRICTIONS

§ 102-37.465 May a SASP modify or release any of the terms and conditions of donation?

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The terms and conditions you are required by the Property Act to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of \$5,000 or more.

(b) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

(c) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased use of the property and that the proposed action meets the

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standards prescribed in your plan of operation.

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee.

(ii) Authority to trade in one donated item for one like item having similar use potential.

§ 102-37.470 At what point may restrictions be released on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of \$5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than \$5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102-37.475 What are the requirements for releasing restrictions on property being considered for exchange?

GSA must consent to the exchange of donated property under Federal restrictions or special handling conditions. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged must have remained in compliance with the terms and conditions of the donation. Otherwise, § 102-37.485 applies. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged; and

(b) Of equal or greater value than the item exchanged.

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COMPLIANCE AND UTILIZATION

§ 102-37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?

You must conduct utilization reviews, as provided in your plan of operation, to ensure that donees are using surplus property during the period of restriction for the purposes for which it was donated. You must fully document your efforts and report all instances of noncompliance (misuse or mishandling of property) to GSA.

§ 102-37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?

If a review or other information indicates noncompliance with donation terms and conditions, you must:

(a) Promptly investigate any suspected failure to comply with the conditions of donated property;

(b) Notify GSA immediately where there is evidence or allegation of fraud, wrongdoing by a screener, or nonuse, misuse, or unauthorized disposal or destruction of donated property;

(c) Temporarily defer any further donations of property to any donee to be investigated for noncompliance allegations until such time as the investigation has been completed and:

(1) A determination made that the allegations are unfounded and the deferment is removed.

(2) The allegations are substantiated and the donee is proposed for suspension or debarment; and

(d) Take steps to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Enforcement of compliance may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

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(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for property in cases where the property has been loaned or leased to an ineligible user or used for an unauthorized purpose.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102-37.490 When must a SASP coordinate with GSA on compliance actions?

You must coordinate with GSA before selling or demanding payment of the fair market or fair rental value of donated property that is:

(a) Subject to any special handling condition or use limitation imposed by GSA (see § 102-37.455); or

(b) Not properly used within 1 year of donation or which ceases to be properly used within 1 year of being placed in use.

§ 102-37.495 How must a SASP handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Enforcement of Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *Enforcement of State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

RETURNS AND REIMBURSEMENT

§ 102-37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial cost of any repairs required to make the property usable if:

(a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;

(b) No breach of the terms and conditions of donation has occurred; and

(c) GSA authorizes the reimbursement.

§ 102-37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

SPECIAL PROVISIONS PERTAINING TO SEAS

§ 102-37.510 Are there special requirements for donating property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

§ 102-37.515 Do SEAs have a priority over other SASP donees for DOD property?

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

Subpart F—Donations to Public Airports

§ 102–37.520 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 49 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport purposes and GSA approves the donation.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102–37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

§ 102–37.530 What are FAA's responsibilities in the donation of surplus property to public airports?

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

- (a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;
- (b) Setting eligibility requirements for public airports and making determinations of eligibility;
- (c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;
- (d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;
- (e) Determining and enforcing compliance with the terms and conditions under which surplus personal property

is transferred for public airport use; and

(f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

- (1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.
- (2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.
- (3) Recovering any expired or invalid screener authorizations.

§ 102–37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

- (a) Provide copies of internal instructions that outline the scope of FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and
- (b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102–37.540 What is the authority for donations to the American National Red Cross?

Section 551 of title 40, United States Code authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102–37.545 What type of property may the American National Red Cross receive?

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

§ 102-37.550 What steps must the American National Red Cross take to acquire surplus property?

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

- (a) Have 21 calendar days to inspect the property or request it without inspection; and
- (b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

§ 102-37.555 What happens to property the American National Red Cross does not request?

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102-37.560 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102-37.565 What is the authority for donations to public bodies?

Section 527 of title 40, United States Code authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102-37.570 What type of property may a holding agency donate under this subpart?

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102-36 of this chapter) may be donated under this subpart. A holding agency

may not donate property that requires destruction for health, safety, or security reasons. When disposing of hazardous materials and other dangerous property, a holding agency must comply with all applicable laws and regulations and any special disposal requirements in part 101-42 of this title.

§ 102-37.575 Is there a special form for holding agencies to process donations?

There is no special form for holding agencies to process donations. A holding agency may use any document that meets its agency's needs for maintaining an audit trail of the transaction.

§ 102-37.580 Who is responsible for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (as defined in § 102-36.40 of this chapter), loading, and transportation to its site.

APPENDIX A TO PART 102-37—
MISCELLANEOUS DONATION STATUTES

The following is a listing of statutes which authorize donations which do not require GSA's approval:

Statute: 10 U.S.C. 2572.

Donor Agency: Any military department (Army, Navy, and Air Force) or the Coast Guard.

Type of Property: Books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat material.

Eligible Recipients: Municipal corporations; soldiers' monument associations; museums, historical societies, or historical institutions of a State or foreign nation; incorporated museums that are operated and maintained for educational purposes only and the charters of which denies them the right to operate for profit; posts of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association; local or national units of any war veterans' association of a foreign nation which is recognized by the national government of that nation or a principal subdivision of that nation; and posts of the Sons of Veterans Reserve.

Statute: 10 U.S.C. 7306.

Donor Agency: Department of the Navy.

Type of Property: Any vessel stricken from the Naval Vessel Register or any captured vessel in the possession of the Navy.

Eligible Recipients: States, Commonwealths, or possessions of the United States; the District of Columbia; and not-for-profit or non-profit entities.

Statute: 10 U.S.C. 7541.

Donor Agency: Department of the Navy.

Type of Property: Obsolete material not needed for naval purposes.

Eligible Recipients: Sea scouts of the Boy Scouts of America; Naval Sea Cadet Corps; and the Young Marines of the Marine Corps League.

Statute: 10 U.S.C. 7545.

Donor Agency: Department of the Navy.

Type of Property: Captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models; other condemned or obsolete material, trophies, and flags; and other material of historic interest not needed by the Navy.

Eligible Recipients: States, territories, commonwealths, or possessions of the United

States, or political subdivisions or municipal corporations thereof; the District of Columbia; libraries; historical societies; educational institutions whose graduates or students fought in World War I or World War II; soldiers' monument associations; State museums; museums operated and maintained for educational purposes only, whose charter denies it the right to operate for profit; posts of the Veterans of Foreign Wars of the United States; American Legion posts; recognized war veterans' associations; or posts of the Sons of Veterans Reserve.

Statute: 14 U.S.C. 641(a).

Donor Agency: Coast Guard.

Type of Property: Obsolete or other material not needed for the Coast Guard.

Eligible Recipients: Coast Guard Auxiliary; sea scout service of the Boy Scouts of America; and public bodies or private organizations not organized for profit.

APPENDIX B TO PART 102-37—ELEMENTS OF A STATE PLAN OF OPERATION

The following is the information and assurances that must be included in a SASP's plan of operation:

STATE PLAN REQUIREMENTS

Regarding . . .	The plan must . . .
(a) Designation of a SASP	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	<p>(2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation.</p> <p>(3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property.</p> <p>(4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees.</p> <p>(5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated.</p> <p>(6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities.</p> <p>(7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it.</p> <p>(8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.</p>
(f) Terms and conditions on donated property.	<p>(1) Require the SASP to identify terms and conditions that will be imposed on the donee for any item of donated property with a unit acquisition cost of \$5,000 or more and any passenger motor vehicle.</p> <p>(2) Provide that the SASP may impose reasonable terms and conditions on the use of other donated property. If the SASP elects to impose additional terms and conditions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms or conditions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases.</p> <p>(3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.</p>
(g) Nonutilized or undistributed property.	<p>Provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by:</p> <p>(1) Transfer to another SASP or Federal agency.</p> <p>(2) Sale.</p> <p>(3) Abandonment or destruction.</p> <p>(4) Other arrangements.</p>
(h) Fair and equitable distribution ...	<p>(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property.</p> <p>(2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution.</p> <p>(3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.</p>
(i) Eligibility	<p>(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property.</p> <p>(2) Provide for donee eligibility records to include at a minimum:</p> <p>(i) Legal name and address of the donee.</p> <p>(ii) Status of the donee as a public agency or as an eligible nonprofit activity.</p> <p>(iii) Details on the scope of the donee's program.</p> <p>(iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit.</p> <p>(v) Proof that the donee is approved, accredited, licensed, or meets any other legal requirement for operation of its program(s).</p> <p>(vi) Financial information.</p> <p>(vii) Written authorization by the donee's governing body or chief administrative officer designating at least one person to act for the donee in acquiring property.</p> <p>(viii) Assurance that the donee will comply with GSA's regulations on nondiscrimination.</p> <p>(ix) Types of property needed.</p>

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(j) Compliance and utilization	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups.	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of surplus property by eligible donees, and how distribution of surplus property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.
(m) Cooperative agreements	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms	Include copies of distribution documents used by the SASP.
(p) Records	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

APPENDIX C TO PART 102-37—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

Accreditation means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for univer-

sities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed

by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

Educational radio or television station means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

Health center means an approved public or nonprofit facility that provides public health

services, including related facilities such as diagnostic and laboratory facilities and clinics.

Historic light station means a historic light station as defined under section 308(e)(2) of the National Historic Preservation Act 16 U.S.C. 470w-7(e)(2), including a historic light station conveyed under subsection (b) of that section, notwithstanding the number of hours that the historic light station is open to the public.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

Library means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health

centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution*.

Museum means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nationally recognized accrediting agency means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at <http://www.ed.gov/admins/finaid/accred>)

Nonprofit means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 et seq.), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) and the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).

Provider of assistance to homeless individuals means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shel-

ter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or nonprofit organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

Public health institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

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Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

- (1) Public police departments.
- (2) Sheriffs' offices.
- (3) The courts.
- (4) Penal and correctional institutions (including juvenile facilities).
- (5) State and local civil defense organizations.
- (6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

School (except schools for the mentally or physically disabled) means a public or non-profit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006; 72 FR 12572, Mar. 16, 2007]

PART 102-38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

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AUTHORITY: 40 U.S.C. 545 and 40 U.S.C. 121(c).

SOURCE: 68 FR 51421, Aug. 26, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 102-38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including—

- (a) Surplus personal property that has completed all required Federal and/or donation screening; and
- (b) Personal property to be sold under the exchange/sale authority.

NOTE TO §102-38.5: You must follow additional guidelines in 41 CFR parts 101-42 and 101-45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102-33 of this chapter.

§ 102-38.10 What is the governing authority for this part?

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

§ 102-38.15 Who must comply with these sales provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102-38.20 Must an executive agency follow the regulations of this part when selling all personal property?

Generally, yes, an executive agency must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions;

(d) Foreign excess personal property is exempt from these provisions; and

(e) Agency sales procedures which are mandated or authorized under laws other than Title 40 United States Code are exempt from this part.

[73 FR 20802, Apr. 17, 2008]

§ 102-38.25 To whom do “we”, “you”, and their variants refer?

Unless otherwise indicated, use of pronouns “we”, “you”, and their variants throughout this part refer to the Sales Center responsible for the sale of the property.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20802, Apr. 17, 2008]

§ 102-38.30 How does an executive agency request a deviation from the provisions of this part?

Refer to §§102-2.60 through 102-2.110 of this chapter for information on how to obtain a deviation from this part.

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However, waivers which are distinct from the standard deviation process and specific to the requirements of the Federal Asset Sales (eFAS) initiative milestones (see subpart H of this part) are addressed in § 102–38.360.

[73 FR 20802, Apr. 17, 2008]

DEFINITIONS

§ 102–38.35 What definitions apply to this part?

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Federal Asset Sales (eFAS) refers to the e-Government initiative to improve the way the Federal Government manages and sells its real and personal property assets. Under this initiative, only an agency designated as a Sales Center (SC) may sell Federal property, unless a waiver has been granted by the eFAS Planning Office in accordance with § 102–38.360. The eFAS initiative is governed and given direction by the eFAS Executive Steering Committee (ESC), with GSA as the managing partner agency.

Federal Asset Sales Planning Office (eFAS Planning Office) refers to the office within GSA assigned responsibility for managing the eFAS initiative.

Holding Agency refers to the agency in possession of personal property eligible for sale under this part.

Identical bids means bids for the same item of property having the same total price.

Migration Plan refers to the document a holding agency prepares to summarize its choice of SC(s) and its plan for migrating agency sales to the SC(s). The format for this document is determined by the eFAS ESC.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government,

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and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

Sales Center (SC) means an agency that has been nominated, designated, and approved by the eFAS ESC and the Office of Management and Budget (OMB) as an official sales solution for Federal property. The criteria for becoming an SC, the selection process, and the ongoing SC requirements for posting property for sale to the eFAS portal and reporting sales activity and performance data are established by the eFAS ESC and can be obtained from the eFAS Planning Office at GSA. The eFAS Planning Office may be contacted via e-mail at FASPlanningOffice@gsa.gov. SCs may utilize (and should consider) private sector entities as well as Government activities and are expected to provide exemplary asset management solutions in one or more of the following areas: on-line sales; off-line sales; and sales-related value added services. SCs will enter into agreements with holding agencies to sell property belonging to these holding agencies. A holding agency may employ the services of multiple SCs to maximize efficiencies.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20802, Apr. 17, 2008]

RESPONSIBILITIES

§ 102–38.40 Who may sell personal property?

An executive agency may sell personal property (including on behalf of another agency when so requested) only if it is a designated Sales Center (SC), or if the agency has received a waiver from the eFAS Planning Office. An SC may engage contractor support

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to sell personal property. Only a duly authorized agency official may execute the sale award documents and bind the United States.

[73 FR 20802, Apr. 17, 2008]

§ 102-38.45 What are an executive agency's responsibilities in selling personal property?

An executive agency's responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.50 What must we do when an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, the agency must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated,

and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102-38.100 through 102-38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102-38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer, the buyer's designee, or an SC. The holding agency may request the SC to perform care and handling services in accordance with their agreement. When specified in the terms and conditions of sale, the SC may charge the buyer costs for storage when the buyer is delinquent in removing the property. The amount so charged may only be retained by the holding agency performing the care and handling in accordance with § 102-38.295.

[73 FR 20803, Apr. 17, 2008]

§ 102-38.65 What if we are or the holding agency is notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you or the holding agency must make the property available for transfer to the

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maximum extent practicable and prior to transfer of title to the property.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.70 May the holding agency abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, the holding agency may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

(1) The personal property has no commercial value; or

(2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

Subpart B—Sales Process

METHODS OF SALE

§ 102–38.75 How may we sell personal property?

(a) You will sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be conducted in a manner most advantageous to the Government. When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

(1) Inspection.

(2) Condition and location of property.

(3) Eligibility of bidders.

(4) Consideration of bids.

(5) Bid deposits and payments.

(6) Submission of bids.

(7) Bid price determination.

(8) Title.

(9) Delivery, loading, and removal of property.

(10) Default, returns, or refunds.

(11) Modifications, withdrawals, or late bids.

(12) Requirements to comply with applicable laws and regulations. 41 CFR part 101–42 contains useful guidance addressing many of these requirements. You should also contact your agency's Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.

(13) Certificate of independent price determinations.

(14) Covenant against contingent fees.

(15) Limitation on Government's liability.

(16) Award of contract.

(b) Standard government forms (e.g., Standard Form 114 series) may be used to document terms and conditions of the sale.

(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102–38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

(1) Type and quantity of property;

(2) Location of property;

(3) Potential market;

(4) Cost to prepare and conduct the sale;

(5) Available facilities; and

(6) Sales experience of the selling activity.

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(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

COMPETITIVE SALES

§ 102-38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102-38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102-38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

NEGOTIATED SALES

§ 102-38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102-38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed \$15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, e.g., sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102-38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102-38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—

(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of \$15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed

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price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of \$5,000. You may submit the report electronically or manually (see §102-38.330).

§ 102-38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may conduct negotiated sales of personal property at fixed prices (fixed price sale) under this section when:

(a) The items are authorized to be sold at fixed price by the Administrator of General Services, as reflected in GSA Bulletin FMR B-10 (located at <http://www.gsa.gov/fmrbulletin>). You may also contact the GSA Office of Travel, Transportation, and Asset Management (MT) at the address listed in §102-38.115 to determine which items are on this list of authorized items;

(b) The head of your agency, or designee, determines in writing that such sales serve the best interest of the Government. When you are selling property on behalf of a holding agency, you must consult with the holding agency in determining whether a fixed price sale meets this criterion; and

(c) You must publicize such sales to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You or the holding agency may also establish additional terms and conditions that must be met by the successful purchaser in accordance with §102-38.75.

[73 FR 20803, Apr. 17, 2008]

§ 102-38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivi-

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sions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, see subpart G of this part.

ADVERTISING

§ 102-38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102-38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102-38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—

- (a) Date, time and location of sale;
- (b) General categories of property being offered for sale;
- (c) Inspection period;
- (d) Method of sale (i.e., spot bid, sealed bid, auction);
- (e) Selling agency; and
- (f) Who to contact for additional information.

PRE-SALE ACTIVITIES

§ 102-38.145 Must we allow for inspection of the personal property to be sold?

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection. If inspection is restricted to

electronic inspections only, due to unusual circumstances prohibiting physical inspection, you must notify your General Services Administration Regional Personal Property Office in writing, with the circumstances surrounding this restriction at least 3 days prior to the start of the screening period.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should also consider such factors as the circumstances of sale, volume of property, type of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspections.

OFFER TO SELL

§ 102–38.155 What is an offer to sell?

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include—

- (a) Sale date and time;
- (b) Method of sale;
- (c) Description of property being offered for sale;
- (d) Selling agency;
- (e) Location of property;
- (f) Time and place for receipt of bids;
- (g) Acceptable forms of bid deposits and payments; and
- (h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is accepted.

Subpart C—Bids

BUYER ELIGIBILITY

§ 102–38.170 May we sell Federal personal property to anyone?

Generally, you may sell Federal personal property to anyone of legal age. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?

Refer to the List of Parties Excluded from Federal Procurement and Non-procurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at <http://epls.arnet.gov>. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

[68 FR 51421, Aug. 26, 2003; 68 FR 53219, Sept. 9, 2003]

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. However, unless allowed by Federal or agency regulations, employees having nonpublic information regarding property offered for sale may not participate in that sale (see 5 CFR 2635.703). For purposes of this section, the term “Federal employee” also applies to an immediate member of the employee’s household.

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§ 102-38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sales to State or local governments are contained in subpart G of this part.

ACCEPTANCE OF BIDS

§ 102-38.190 What is considered a responsive bid?

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of the submission. Only responsive bids may be considered for award.

§ 102-38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if—

- (a) The bidder accepts all the terms and conditions of the offer to sell; and
- (b) Award of the bid would result in a binding contract.

§ 102-38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

§ 102-38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102-38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102-38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot bid sale or auction, all bids are

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disclosed as they are submitted. No information other than names may be disclosed regarding the bidder(s).

§ 102-38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (e.g., timely removal of the property, terms of payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102-38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice or your agency's Office of the Inspector General.

BID DEPOSITS

§ 102-38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102-38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102-38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, see § 102-2.135 of subchapter A.

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§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, you should return the deposit bond to the bidder.

LATE BIDS

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

MODIFICATION OR WITHDRAWAL OF BIDS

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

MISTAKES IN BIDS

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR 14.407, Mistakes in Bids (48 CFR 14.407). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority, or a limited number

of authorities in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must—

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General when requested.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

AWARDS

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this subchapter B.

TRANSFER OF TITLE

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional

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certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see §102-2.135 of this chapter.

PAYMENTS

§ 102-38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, e.g., cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

DISPOSITION OF PROCEEDS

§ 102-38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds, in accordance with your agreement with the holding agency, equal to your direct costs and reasonably related indirect costs (including your share of the Governmentwide costs to support the eFAS Internet portal and Governmentwide reporting requirements) incurred in selling personal property.

(b) A holding agency may retain that portion of the sales proceeds equal to its costs of care and handling directly related to the sale of personal property by the SC (e.g., shipment to the SC, storage pending sale, and inspection by prospective buyers).

(c) After accounting for amounts retained under paragraphs (a) and (b) of this section, as applicable, a holding agency may retain the balance of pro-

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ceeds from the sale of its agency's personal property when—

(1) It has the statutory authority to retain all proceeds from sales of personal property;

(2) The property sold was acquired with non-appropriated funds as defined in §102-36.40 of this subchapter B;

(3) The property sold was surplus Government property that was in the custody of a contractor or subcontractor, and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102-39 of this subchapter B; or

(5) The property sold was related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107-67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 107-67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

[73 FR 20803, Apr. 17, 2008]

§ 102-38.300 What happens to sales proceeds that neither we nor the holding agency are authorized to retain, or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in §102-38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

DISPUTES

§ 102-38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102-38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233-1 (48 CFR part 52) is included in all offers to sell

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and contracts for the sale of personal property.

§ 102–38.315 **Are we required to use Alternative Disputes Resolution for sales contracts?**

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651–658).

Subpart E—Other Governing Statutes

§ 102–38.320 **Are there other statutory requirements governing the sale of Federal personal property?**

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

ANTITRUST REQUIREMENTS

§ 102–38.325 **What are the requirements pertaining to antitrust laws?**

When the sale of personal property has an estimated fair market value of \$3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property. You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

[68 FR 51421, Aug. 26, 2003; 68 FR 53219, Sept. 9, 2003]

Subpart F—Reporting Requirements

§ 102–38.330 **Are there any reports that we must submit to the General Services Administration?**

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of \$5,000 (see § 102–38.115). For each negotiated sale that meets this criterion, provide the following:

- (1) Description of the property (including quantity and condition).
- (2) Acquisition cost and date (if not known, estimate and so indicate).
- (3) Estimated fair market value (including date of estimate and name of estimator).
- (4) Name and address of purchaser.
- (5) Date of sale.
- (6) Gross and net sales proceeds.
- (7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (see § 102–39.75).

§ 102–38.335 **Is there any additional personal property sales information that we must submit to the General Services Administration?**

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

- (a) Competitive sale to the public;
- (b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or
- (c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102–38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Yes, State Agencies for Surplus Property (SASPs) must follow the regulations in this part when conducting sales on behalf of the General Services Administration of Government personal property in their custody.

Subpart H—Implementation of the Federal Asset Sales Program

SOURCE: 73 FR 20803, Apr. 17, 2008, unless otherwise noted.

§ 102–38.360 What must an executive agency do to implement the eFAS program?

(a) An executive agency must review the effectiveness of all sales solutions, and compare them to the effectiveness (e.g., cost, level of service, and value added services) of the eFAS SCs. Agencies should give full consideration to sales solutions utilizing private sector entities, including small businesses, that are more effective than the solutions provided by any eFAS-approved SC. If the agency decides that there are more effective sales solutions than those solutions offered by the eFAS SCs, the agency must request a waiver from the milestones using the procedures and forms provided by the eFAS Planning Office. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient. Waiver approval will be coordinated with GSA's Office of Travel, Transportation, and Asset Management. Contact the eFAS Planning Office at FASPlanningOffice@gsa.gov to obtain these procedures and forms.

(b) An approved waiver for meeting one of the eFAS milestones does not automatically waive all milestone requirements. For example, if an agency receives a waiver to the migration milestone, the agency must still (1) post asset information on the eFAS Web site and (2) provide post-sales data to the eFAS Planning Office in accordance with the content and format requirements developed by the eFAS ESC, unless waivers to these milestones are also requested and approved. Waivers to the eFAS milestones will not be permanent. Upon expiration of the waiver to the migration milestone, an agency must either migrate to an approved SC, or serve as a fully functioning SC, as soon as practicable. See the definition of a "Sales Center" at § 102–38.35 for an overview of how agency sales solutions become SCs.

(c) An agency which receives a waiver from the eFAS milestones must comply with subparts A through G of this part as if it were an SC.

(d) An executive agency must comply with all eFAS milestones approved by OMB including those regarding the

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completion of an agency-wide sales migration plan, the reporting of pre- and post-sales data, and the migration to approved SCs unless a waiver has been submitted by the agency and approved by the eFAS Planning Office. The eFAS milestones are available for viewing at <http://www.gsa.gov/govsalesmilestones>.

§ 102-38.365 Is a holding agency required to report property in “scrap” condition to its selected SC?

No. Property which has no value except for its basic material content (scrap material) may be disposed of by the holding agency by sale or as otherwise provided in §102-38.70. However, the holding agency should consult the SC(s) selected by the holding agency as to the feasibility of selling the scrap material. Agencies selling scrap property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

§ 102-38.370 What does a holding agency do with property which cannot be sold by its SC?

All reasonable efforts must be afforded the SC to sell the property. If the property remains unsold after the time frame agreed to between the SC and the holding agency, the holding agency may dispose of the property by sale or as otherwise provided in §102-38.70. The lack of public interest in buying the property is evidence that the sales proceeds would be minimal. Agencies selling property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

PART 102-39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Subpart A—General

Sec.

- 102-39.5 What is the exchange/sale authority?
- 102-39.10 What does this part cover?
- 102-39.15 How are the terms “I” and “you” used in this part?

- 102-39.20 What definitions apply to this part?
- 102-39.25 Which exchange/sale provisions are subject to deviation?
- 102-39.30 How do I request a deviation from this part?

Subpart B—Exchange/Sale Considerations

- 102-39.35 When should I consider using the exchange/sale authority?
- 102-39.40 Why should I consider using the exchange/sale authority?
- 102-39.45 When should I not use the exchange/sale authority?
- 102-39.50 How do I determine whether to do an exchange or a sale?
- 102-39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?
- 102-39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?
- 102-39.65 What conditions apply to the exchange/sale of personal property?

Subpart C—Exchange/Sale Methods and Reports

- 102-39.70 What are the exchange methods?
- 102-39.75 What are the sales methods?
- 102-39.80 What are the accounting requirements for the proceeds of sale?
- 102-39.85 What information am I required to report?

AUTHORITY: 40 U.S.C. 121(c); 40 U.S.C. 503.

SOURCE: 66 FR 48614, Sept. 21, 2001, unless otherwise noted.

Subpart A—General

§ 102-39.5 What is the exchange/sale authority?

The exchange/sale authority is a statutory provision, (40 U.S.C. 503), which states in part: “In acquiring personal property, an executive agency may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired.”

[73 FR 50880, Aug. 29, 2008]

§ 102-39.10 What does this part cover?

This part covers the exchange/sale authority, and applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in

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this part and in parts 101-33 and 101-42 of this title.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004]

§ 102-39.15 How are the terms “I” and “you” used in this part?

Use of pronouns “I” and “you” throughout this part refer to executive agencies.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102-39.20 What definitions apply to this part?

The following definitions apply to this part:

Acquire means to procure or otherwise obtain personal property, including by lease (sometimes known as rent).

Combat material means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

Excess property means any personal property under the control of any Federal agency that is no longer required for that agency’s needs or responsibilities, as determined by the agency head or designee.

Exchange means to replace personal property by trade or trade-in with the supplier of the replacement property.

Exchange/sale means to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

Historic item means property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as mili-

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tary aircraft still in use by active or reserve units, are not historic items.

Replacement means the process of acquiring personal property to be used in place of personal property that is still needed but:

(1) No longer adequately performs the tasks for which it is used; or

(2) Does not meet the agency’s need as well as the personal property to be acquired.

Service Life Extension Program (SLEP) means the modification of a personal property item undertaken to extend the life of the item beyond that which was previously planned. SLEPs extend capital asset life by retrofit, major modification, remanufacturing, betterment, or enhancement.

Similar means the acquired item(s) and replaced item(s):

(1) Are identical; or

(2) Fall within a single Federal Supply Classification (FSC) Group of property (includes any and all forms of property within a single FSC Group); or

(3) Are parts or containers for similar end items; or

(4) Are designed or constructed for the same purpose (includes any and all forms of property regardless of the FSC Group to which they are assigned).

Surplus property means excess personal property not required for the needs of any Federal agency, as determined by GSA under part 102-37 of this chapter.

[66 FR 48614, Sept. 21, 2001, as amended at 73 FR 50880, Aug. 29, 2008]

§ 102-39.25 Which exchange/sale provisions are subject to deviation?

All of the provisions in this part are subject to deviation (upon presentation of adequate justification) except those mandated by statute. See the link on “Exchange/Sale” at www.gsa.gov/personalpropertypolicy for additional information on requesting deviations from this part.

[73 FR 50880, Aug. 29, 2008]

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§ 102-39.30 How do I request a deviation from this part?

See part 102-2 of this chapter (41 CFR part 102-2) to request a deviation from the requirements of this part.

[73 FR 50880, Aug. 29, 2008]

Subpart B—Exchange/Sale Considerations

§ 102-39.35 When should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority when replacing personal property.

[73 FR 50880, Aug. 29, 2008]

§ 102-39.40 Why should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority to reduce the cost of replacement personal property. When you have personal property that is wearing out or obsolete and must be replaced, you should consider either exchanging or selling that property and using the exchange allowance or sales proceeds to offset the cost of the replacement personal property. Conversely, if you choose not to replace the property using the exchange/sale authority, you may declare it as excess and dispose of it through the normal disposal process as addressed in part 102-36 of this chapter. Keep in mind, however, that any net proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you. You may use the exchange/sale authority in the acquisition of personal property even if the acquisition is under a services contract, as long as the property acquired under the services contract is similar to the property exchanged or sold (e.g., for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

[73 FR 50880, Aug. 29, 2008]

§ 102-39.45 When should I not use the exchange/sale authority?

You should not use the exchange/sale authority if the exchange allowance or

estimated sales proceeds for the property will be unreasonably low. You must either abandon or destroy such property, or declare the property excess, in accordance with part 102-36 of this chapter. Further, you must not use the exchange/sale authority if the transaction(s) would violate any other applicable statute or regulation.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102-39.50 How do I determine whether to do an exchange or a sale?

You must determine whether an exchange or sale will provide the greater return for the Government. When estimating the return under each method, consider all related administrative and overhead costs.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102-39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?

If you have property to replace which is eligible for exchange/sale, you should first, to the maximum extent practicable, solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

(1) Do so under terms mutually agreeable to you and the recipient.

(2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.

(3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

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(b) State Agencies for Surplus Property (SASPs) known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price under the conditions specified at §102-38.125 of this title. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102-39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

Unless a deviation is requested of and approved by GSA as addressed in part 102-2 of this chapter and the provisions of §§102-39.25 and 102-39.30, you must not use the exchange/sale authority for:

- (a) The following FSC groups of personal property:
 - 10 Weapons.
 - 11 Nuclear ordnance.
 - 12 Fire control equipment.
 - 14 Guided missiles.
 - 15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).
 - 42 Firefighting, rescue, and safety equipment.
 - 44 Nuclear reactors (FSC Class 4470 only).
 - 51 Hand tools.
 - 54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).
 - 68 Chemicals and chemical products, except medicinal chemicals.
 - 84 Clothing, individual equipment, and insignia.

NOTE TO §102-39.60(a): Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

(b) Materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the De-

fense Production Act inventory (50 U.S.C. App. 2093).

(c) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of §101-42.1102-4 of this title.

(d) Controlled substances, unless you meet the requirements of §101-42.1102-3 of this title.

(e) Property with a condition code of scrap, as defined at FMR 102-36.40, except:

(1) Property that had utility and value at the point in time when a determination was made to use the exchange/sale authority;

(2) Property that was otherwise eligible for exchange/sale, but was coded as scrap due to damage (e.g., accident or natural disaster); or

(3) Scrap gold for fine gold.

(f) Property that was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(g) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Department of Defense Demilitarization Office.

(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of §102-33.370 of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

(1) Restriction on procurement of a commodity or commodities;

(2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

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- (3) Contractual obligation.
- (1) Vessels subject to 40 U.S.C. 584.

[66 FR 48614, Sept. 21, 2001; 66 FR 51095, Oct. 5, 2001, as amended at 69 FR 11539, Mar. 11, 2004; 71 FR 20900, Apr. 24, 2006. Redesignated at 73 FR 50880, Aug. 29, 2008; 75 FR 24820, May 6, 2010]

§ 102-39.65 What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

- (a) The property exchanged or sold is similar to the property acquired;
- (b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;
- (c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;
- (d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and
- (e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated with each exchange/sale transaction. At a minimum, the documentation must include:
 - (1) The FSC Group of the items exchanged or sold, and the items acquired;
 - (2) The number of items exchanged or sold, and the number of items acquired;
 - (3) The acquisition cost and exchange allowance or net sales proceeds of the items exchanged or sold, and the acquisition cost of the items acquired;
 - (4) The date of the transaction(s);
 - (5) The parties involved; and
 - (6) A statement that the transactions comply with the requirements of this part 102-39.

NOTE TO §102-39.65: In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determina-

tion that the item exchanged and the item acquired are historic items.

[73 FR 50881, Aug. 29, 2008]

Subpart C—Exchange/Sale Methods and Reports

§ 102-39.70 What are the exchange methods?

Exchange of property may be accomplished by either of the following methods:

- (a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit.
- (b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102-39.75 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in part 102-38 of this title, in the sale of property being replaced, except for the provisions of §§102-38.100 through 102-38.115 of this title regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

- (1) The reasonable value involved in the contract does not exceed \$500; or
- (2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of § 102-38.120 and 102-38.125 of this title.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

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§ 102-39.80 What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was exchanged or sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

[73 FR 50881, Aug. 29, 2008, as amended at 75 FR 24820, May 6, 2010]

§ 102-39.85 What information am I required to report?

(a) You must submit, within 90 calendar days after the close of each fiscal year, a summary report in a format of your choice on the exchange/sale transactions made under this part during the fiscal year (except for transactions involving books and periodicals in your libraries). The report must include:

(1) A list by Federal Supply Classification Group of property sold under this part showing the:

- (i) Number of items sold;
- (ii) Acquisition cost; and
- (iii) Net proceeds.

(2) A list by Federal Supply Classification Group of property exchanged under this part showing the:

- (i) Number of items exchanged;
- (ii) Acquisition cost; and
- (iii) Exchange allowance.

(b) Submit your report electronically or by mail to the General Services Administration, Office of Travel, Transportation and Asset Management (MT), 1800 F Street, NW., Washington, DC 20405.

(c) Report control number: 1528-GSA-AN.

(d) If you make no transactions under this part during a fiscal year, you must submit a report stating that no transactions occurred.

[66 FR 48614, Sept. 21, 2001, as amended at 71 FR 20900, Apr. 24, 2006. Redesignated at 73 FR 50880, Aug. 29, 2008]

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PART 102-40 [RESERVED]

PART 102-41—DISPOSITION OF SEIZED, FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Sec.

Subpart A—General Provisions

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- 102-41.15 How do we request a deviation from these requirements and who can approve it?

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- 102-41.20 What definitions apply to this part?

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- 102-41.25 Who retains custody and is responsible for the reporting, care, and handling of property covered by this part?
- 102-41.30 What is GSA’s role in the disposition of property covered by this part?
- 102-41.35 Do we report to GSA all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not retained for official use?

Subpart B—Seized or Forfeited Personal Property

- 102-41.40 How is personal property forfeited?
- 102-41.45 May we place seized personal property into official use before the forfeiture process is completed?
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- 102-41.55 Where do we send the reports for seized or forfeited personal property?
- 102-41.60 Are there special requirements in reporting seized or forfeited personal property to GSA?
- 102-41.65 What happens to forfeited personal property that is transferred or retained for official use?
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- 102-41.75 May we retain the proceeds from the sale of forfeited personal property?

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- 102-41.90 What happens to voluntarily abandoned personal property retained for official use?
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- 102-41.125 What choices do I have for retaining or disposing of unclaimed personal property?
- 102-41.130 What must we do when we retain unclaimed personal property for official use?
- 102-41.135 How much reimbursement do we pay the former owner when he or she files a claim for unclaimed personal property that we no longer have?
- 102-41.140 When do we report to GSA unclaimed personal property not retained for official use?
- 102-41.145 Where do we send the reports for unclaimed personal property?
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- 102-41.185 Are there certain types of forfeited, voluntarily abandoned, or unclaimed property that must be handled differently than other property addressed in this part?

FIREARMS

- 102-41.190 May we retain forfeited, voluntarily abandoned, or unclaimed firearms for official use?
- 102-41.195 How do we dispose of forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use?
- 102-41.200 Are there special disposal provisions for firearms that are seized and forfeited for a violation of the National Firearms Act?

FORFEITED DISTILLED SPIRITS, WINE, AND BEER

- 102-41.205 Do we report all forfeited distilled spirits, wine, and beer to GSA for disposal?

DRUG PARAPHERNALIA

- 102-41.210 What are some examples of drug paraphernalia?
- 102-41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?
- 102-41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State agency for surplus property (SASP)?
- 102-41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?
- 102-41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?
- 102-41.235 May we sell forfeited drug paraphernalia?

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 71 FR 41370, July 21, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 102-41.5 What does this part cover?

(a) This part covers the disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property under the custody of any Federal agency located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. Disposition of such personal property located elsewhere must be in accordance with holding agency regulations. Please see §102-36.380 of this subchapter B regarding the disposal of foreign excess. The General Services Administration (GSA) does not normally

accept responsibility for disposal of property located outside the United States and its territories. Additional guidance on disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property that requires special handling (e.g., firearms, hazardous materials) is contained in part 101-42 of this title. Additional guidance on the disposition of firearms (as scrap only), distilled spirits, wine, beer, and drug paraphernalia is provided in subpart E of this part.

(b) These regulations do not include disposal of seized, forfeited, voluntarily abandoned, and unclaimed personal property covered under authorities outside of the following statutes:

- (1) 40 U.S.C. 552, Abandoned or Unclaimed Property on Government Premises.
- (2) 40 U.S.C. 1306, Disposition of Abandoned or Forfeited Property.
- (3) 26 U.S.C. 5688, Forfeited Distilled Spirits, Wines, and Beer.
- (4) 26 U.S.C. 5872, Forfeited Firearms.
- (5) 21 U.S.C. 863, Drug Paraphernalia.

§ 102-41.10 To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this part refer to the agency having custody of the personal property.

§ 102-41.15 How do we request a deviation from these requirements and who can approve it?

See §§ 102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of this part.

DEFINITIONS

§ 102-41.20 What definitions apply to this part?

The following definitions apply to this part:

Beer means an alcoholic beverage made from malted cereal grain, flavored with hops, and brewed by slow fermentation.

Distilled spirits, as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), means ethyl alcohol; hydrated oxide of ethyl; or spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

Drug paraphernalia means any equipment, product, or material primarily intended or designed for use in manufacturing, compounding, converting, concealing, processing, preparing, or introducing into the human body a controlled substance in violation of the Controlled Substances Act (see 21 U.S.C. 863). It includes items primarily for use in injecting, ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body.

Eleemosynary institution means any nonprofit health or medical institution that is organized and operated for charitable purposes.

Firearms means any weapon, silencer, or destructive device designed to, or readily convertible to, expel a projectile by the action of an explosive, as defined in the Internal Revenue Code (26 U.S.C. 5845). Excludes antique firearms as defined in 26 U.S.C. 5845(g).

Forfeited property means personal property that the Government has acquired ownership of through a summary process or court order pursuant to any law of the United States.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and handling will be the responsibility of the agency until final ownership is determined by the judicial process.

Unclaimed property means personal property unknowingly abandoned and found on premises owned or leased by the Government, i.e., lost and found property.

Voluntarily abandoned property means personal property abandoned to any Federal agency in a way that immediately vests title to the property in the Government. There must be written or circumstantial evidence that the property was intentionally and voluntarily abandoned. This evidence should be clear that the property was not simply lost by the owner.

Wine means the fermented juice of a plant product, as defined in 27 U.S.C. 211.

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RESPONSIBILITY

§ 102-41.25 Who retains custody and is responsible for the reporting, care, and handling of property covered by this part?

You, the holding agency, normally retain physical custody of the property and are responsible for its care and handling pending final disposition. With the exception of property listed in § 102-41.35, you must report promptly to the GSA forfeited, voluntarily abandoned, or unclaimed personal property not being retained for official use and seized property on which proceedings for forfeiture by court decree are being started or have begun. In general, the procedures for reporting such property parallel those for reporting excess personal property under part 102-36 of this subchapter B.

§ 102-41.30 What is GSA's role in the disposition of property covered by this part?

(a) *Seized property subject to court proceedings for forfeiture.* (1) If the seizing agency files a request for the property for its official use, the GSA Region 3/ National Capital Region will apply to the court for an order to turn the property over to the agency should forfeiture be decreed. If no such request has been filed, GSA will determine whether retention of the property for Federal official use is in the Government's best interest, and, if so, will apply to the court to order delivery of the property to—

- (i) Any other Federal agency that requests it; or
- (ii) The seizing agency to be retained for a reasonable time in case the property may later become necessary to any agency for official use.

(2) In the event that the property is not ordered by competent authority to be forfeited to the United States, it may be returned to the claimant.

(b) *Forfeited, voluntarily abandoned, or unclaimed property.* When forfeited, voluntarily abandoned, or unclaimed property is reported to GSA for disposal, GSA will direct its disposition by—

- (1) Transfer to another Federal agency;
- (2) Donation to an eligible recipient, if the property is not needed by a Federal agency and there are no require-

ments for reimbursement to satisfy the claims of owners, lien holders, or other lawful claimants;

(3) Sale; or

(4) Abandonment and destruction in accordance with § 102-36.305 of this subchapter B.

§ 102-41.35 Do we report to GSA all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not retained for official use?

Yes, send GSA reports of excess (see § 102-36.125 of this subchapter B) for all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not required for official use, except the following, whose disposition is covered under other statutes and authorities:

(a) Forfeited firearms or munitions of war seized by the Department of Commerce and transferred to the Department of Defense (DOD) pursuant to 22 U.S.C. 401.

(b) Forfeited firearms directly transferable to DOD by law.

(c) Seeds, plants, or misbranded packages seized by the Department of Agriculture.

(d) Game animals and equipment (other than vessels, including cargo) seized by the Department of the Interior.

(e) Files of papers and undeliverable mail in the custody of the United States Postal Service.

(f) Articles in the custody of the Department of Commerce Patent and Trademark Office that are in violation of laws governing trademarks or patents.

(g) Unclaimed and voluntarily abandoned personal property subject to laws and regulations of the U.S. Customs and Border Protection, Department of Homeland Security.

(h) Property seized in payment of or as security for debts arising under the internal revenue laws.

(i) Lost, abandoned, or unclaimed personal property the Coast Guard or the military services are authorized to dispose of under 10 U.S.C. 2575.

(j) Property of deceased veterans left on a Government facility subject to 38 U.S.C. 8501.

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(k) Controlled substances reportable to the Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(l) Forfeited, condemned, or voluntarily abandoned tobacco, snuff, cigars, or cigarettes which, if offered for sale, will not bring a price equal to the internal revenue tax due and payable thereon; and which is subject to destruction or delivery without payment of any tax to any hospital maintained by the Federal Government for the use of present or former members of the military.

(m) Property determined appropriate for abandonment/destruction (see § 102-36.305 of this subchapter B).

(n) Personal property where handling and disposal is governed by specific legislative authority notwithstanding Title 40 of the United States Code.

Subpart B—Seized or Forfeited Personal Property

§ 102-41.40 How is personal property forfeited?

Personal property that has been seized by a Federal agency may be forfeited through court decree (judicial forfeiture) or administratively forfeited if the agency has specific authority without going through the courts.

§ 102-41.45 May we place seized personal property into official use before the forfeiture process is completed?

No, property under seizure and pending forfeiture cannot be placed into official use until a final determination is made to vest title in the Government.

§ 102-41.50 May we retain forfeited personal property for official use?

Yes, you may retain for official use personal property forfeited to your agency, except for property you are required by law to sell. Retention of large sedans and limousines for official use is only authorized under the provisions of part 102-34 of this subchapter B. Except for the items noted in § 102-41.35, report to GSA all forfeited personal property not being retained for official use.

41 CFR Ch. 102 (7-1-11 Edition)

§ 102-41.55 Where do we send the reports for seized or forfeited personal property?

(a) Except for the items noted in paragraph (b) of this section, report seized or forfeited personal property not retained for official use to the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407.

(b) Report aircraft, firearms, and vessels to the regional GSA Property Management Branch office specified in § 102-36.125 of this subchapter B.

§ 102-41.60 Are there special requirements in reporting seized or forfeited personal property to GSA?

Yes, in addition to the information required in § 102-36.235 of this subchapter B for reporting excess, you must indicate—

(a) Whether the property—

(1) Was forfeited in a judicial proceeding or administratively (without going through a court);

(2) Is subject to pending court proceedings for forfeiture, and, if so, the name of the defendant, the place and judicial district of the court from which the decree will be issued, and whether you wish to retain the property for official use;

(b) The report or case number under which the property is listed; and

(c) The existence or probability of a lien, or other accrued or accruing charges, and the amount involved.

§ 102-41.65 What happens to forfeited personal property that is transferred or retained for official use?

Except for drug paraphernalia (see §§ 102-41.210 through 102-41.235), forfeited personal property retained for official use or transferred to another Federal agency under this subpart loses its identity as forfeited property. When no longer required for official use, you must report it to GSA as excess for disposal in accordance with part 102-36 of this subchapter B. You must follow the additional provisions of subpart E of this part and part 101-42 of Chapter 101, Federal Property Management Regulations in this title when disposing of firearms, distilled spirits, wine, beer, and drug paraphernalia.

§ 102-41.70 Are transfers of forfeited personal property reimbursable?

Recipient agencies do not pay for the property. However, you may charge the recipient agency all costs you incurred in storing, packing, loading, preparing for shipment, and transporting the property. If there are commercial charges incident to forfeiture prior to the transfer, the recipient agency must pay these charges when billed by the commercial organization. Any payment due to lien holders or other lawful claimants under a judicial forfeiture must be made in accordance with provisions of the court decree.

§ 102-41.75 May we retain the proceeds from the sale of forfeited personal property?

No, you must deposit the sales proceeds in the U.S. Treasury as miscellaneous receipts, unless otherwise directed by court decree or specifically authorized by statute.

Subpart C—Voluntarily Abandoned Personal Property

§ 102-41.80 When is personal property voluntarily abandoned?

Personal property is voluntarily abandoned when the owner of the property intentionally and voluntarily gives up title to such property and title vests in the Government. The receiving agency ordinarily documents receipt of the property to evidence its voluntary relinquishment. Evidence of the voluntary abandonment may be circumstantial.

§ 102-41.85 What choices do I have for retaining or disposing of voluntarily abandoned personal property?

You may either retain or dispose of voluntarily abandoned personal property based on the following circumstances:

(a) If your agency has a need for the property, you may retain it for official use, except for large sedans and limousines which may only be retained for official use as authorized under part 102-34 of this subchapter B. See § 102-41.90 for how retained property must be handled.

(b) If your agency doesn't need the property, you should determine whether it may be abandoned or destroyed in accordance with the provisions at FMR 102-36.305 through 102-36.330. Furthermore, in addition to the circumstances when property may be abandoned or destroyed without public notice at FMR 102-36.330, voluntarily abandoned property may also be abandoned or destroyed without public notice when the estimated resale value of the property is less than \$500.

(c) If the property is not retained for official use or abandoned or destroyed, you must report it to GSA as excess in accordance with § 102-41.95.

§ 102-41.90 What happens to voluntarily abandoned personal property retained for official use?

Voluntarily abandoned personal property retained for official use or transferred to another Federal agency under this subpart loses its identity as voluntarily abandoned property. When no longer required for official use, you must report it to GSA as excess, or abandon/destroy the property, in accordance with part 102-36 of this subchapter B.

§ 102-41.95 Where do we send the reports for voluntarily abandoned personal property?

Except for aircraft, firearms, and vessels, report voluntarily abandoned personal property to the regional GSA Property Management Branch office for the region in which the property is located. Report aircraft, firearms, and vessels to the regional GSA Property Management Branch office specified in § 102-36.125 of this subchapter B.

§ 102-41.100 What information do we provide when reporting voluntarily abandoned personal property to GSA?

When reporting voluntarily abandoned personal property to GSA, you must provide a description and location of the property, and annotate that the property was voluntarily abandoned.

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§ 102-41.105 What happens to voluntarily abandoned personal property when reported to GSA?

Voluntarily abandoned personal property reported to GSA will be made available for transfer, donation, sale, or abandonment/destruction in accordance with parts 102-36, 102-37, 102-38, and §§ 102-36.305 through 102-36.330 of this subchapter B, respectively. You must follow the additional provisions of §§ 102-41.190 through 102-41.235 and part 101-42 of Chapter 101, Federal Property Management Regulations in this title when disposing of firearms and other property requiring special handling.

§ 102-41.110 Are transfers of voluntarily abandoned personal property reimbursable?

No, all transfers of voluntarily abandoned personal property will be without reimbursement. However, you may charge the recipient agency all costs you incurred in storing, packing, loading, preparing for shipment, and transporting the property.

§ 102-41.115 May we retain the proceeds received from the sale of voluntarily abandoned personal property?

No, you must deposit the sales proceeds in the U.S. Treasury as miscellaneous receipts unless your agency has specific statutory authority to do otherwise.

Subpart D—Unclaimed Personal Property

§ 102-41.120 How long must we hold unclaimed personal property before disposition?

You must generally hold unclaimed personal property for 30 calendar days from the date it was found. Unless the previous owner files a claim, title to the property vests in the Government after 30 days, and you may retain or dispose of the property in accordance with this part. However, see the following sections for handling of unclaimed personal property under specific circumstances.

41 CFR Ch. 102 (7-1-11 Edition)

§ 102-41.125 What choices do I have for retaining or disposing of unclaimed personal property?

You may either retain or dispose of unclaimed abandoned personal property based on the following circumstances:

(a) If your agency has a need for the property, you may retain it for official use if you have held the unclaimed property for 30 calendar days and the former owner has not filed a claim. After 30 days, title vests in the Government and you may retain the unclaimed property for official use. Large sedans and limousines which may only be retained for official use as authorized under part 102-34 of this subchapter B. See § 102-41.130 for how retained property must be handled.

(b) If your agency doesn't need the property, you should determine whether it may be immediately abandoned or destroyed in accordance with the provisions at FMR 102-36.305 through 102-36.330. You are not required to hold unclaimed property for 30 days, if you decide to abandon or destroy it. Title to the property immediately vests in the Government in these circumstances. In addition to the circumstances when property may be abandoned or destroyed without public notice at FMR 102-36.330, unclaimed personal property may also be abandoned or destroyed without public notice when the estimated resale value of the property is less than \$500. See § 102-41.135 for procedures to be followed if a claim is filed.

(c) If the property is not retained for official use or abandoned or destroyed, you must report it to GSA as excess in accordance with § 102-41.140.

§ 102-41.130 What must we do when we retain unclaimed personal property for official use?

(a) You must maintain records of unclaimed personal property retained for official use for 3 years after title vests in the Government to permit identification of the property should the former owner file a claim for the property. You must also deposit funds received from disposal of such property in a special account to cover any valid claim filed within this 3-year period.

(b) When you no longer need the unclaimed property which you have

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placed in official use, report it as excess in the same manner as other excess property under part 102-36 of this subchapter B.

§ 102-41.135 How much reimbursement do we pay the former owner when he or she files a claim for unclaimed personal property that we no longer have?

If the property was sold, reimbursement of the property to the former owner must not exceed any proceeds from the disposal of such property, less the costs of the Government's care and handling of the property. If the property was abandoned or destroyed in accordance with §102-41.125, or otherwise used or transferred, reimbursement of the property to the former owner must not exceed the estimated resale value of the property at the time of the vesting of the property with the Government, less costs incident to the care and handling of the property, as determined by the General Services Administration, Office of Travel, Transportation, and Asset Management (MT), Washington DC, 20405.

§ 102-41.140 When do we report to GSA unclaimed personal property not retained for official use?

After you have held the property for 30 calendar days and no one has filed a claim for it, the title to the property vests in the Government. If you decide not to retain the property for official use, report it as excess to GSA in accordance with part 102-36 of this subchapter B.

§ 102-41.145 Where do we send the reports for unclaimed personal property?

Except for the items noted in §102-36.125 of this subchapter B, report unclaimed personal property to the regional GSA Property Management Branch office for the region in which the property is located.

§ 102-41.150 What special information do we provide on reports of unclaimed personal property?

On reports of unclaimed personal property, you must provide the report or case number assigned by your agency, property description and location,

and indicate the property as unclaimed and the estimated fair market value.

§ 102-41.155 Is unclaimed personal property available for transfer to another Federal agency?

Yes, unclaimed personal property is available for transfer to another Federal agency, but only after 30 calendar days from the date of finding such property and no claim has been filed by the former owner, and with fair market value reimbursement from the recipient agency. The transferred property then loses its identity as unclaimed property and becomes property of the Government, and when no longer needed it must be reported excess in accordance with part 102-36 of this subchapter B.

§ 102-41.160 May we retain the reimbursement from transfers of unclaimed personal property?

No, you must deposit the reimbursement from transfers of unclaimed personal property in a special account for a period of 3 years pending a claim from the former owner. After 3 years, you must deposit these funds into miscellaneous receipts of the U.S. Treasury unless your agency has statutory authority to do otherwise.

§ 102-41.165 May we require reimbursement for the costs incurred in the transfer of unclaimed personal property?

Yes, you may require reimbursement from the recipient agency of any direct costs you incur in the transfer of the unclaimed property (e.g., storage, packing, preparation for shipping, loading, and transportation).

§ 102-41.170 Is unclaimed personal property available for donation?

No, unclaimed personal property is not available for donation because reimbursement at fair market value is required.

§ 102-41.175 May we sell unclaimed personal property?

Yes, you may sell unclaimed personal property after title vests in the Government (as provided for in §102-41.120) and when there is no Federal interest. You may sell unclaimed personal property subject to the same terms and

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conditions as applicable to surplus personal property and in accordance with part 102-38 of this subchapter B.

§ 102-41.180 May we retain the proceeds from the sale of unclaimed personal property?

No, you must deposit proceeds from the sale of unclaimed personal property in a special account to be maintained for a period of 3 years pending a possible claim by the former owner. After the 3-year period, you must deposit the funds in the U.S. Treasury as miscellaneous receipts or in such other agency accounts when specifically authorized by statute.

Subpart E—Personal Property Requiring Special Handling

§ 102-41.185 Are there certain types of forfeited, voluntarily abandoned, or unclaimed property that must be handled differently than other property addressed in this part?

Yes, you must comply with the additional provisions in this subpart when disposing of the types of property listed here.

FIREARMS

§ 102-41.190 May we retain forfeited, voluntarily abandoned, or unclaimed firearms for official use?

Generally, no; you may retain forfeited, voluntarily abandoned, or unclaimed firearms only when you are statutorily authorized to use firearms for official purposes.

§ 102-41.195 How do we dispose of forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use?

Report forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use to the General Services Administration, Property Management Branch (7FP-8), Denver, CO 80225-0506 for disposal in accordance with § 101-42.1102-10 of the Federal Property Management Regulations in this title.

41 CFR Ch. 102 (7-1-11 Edition)

§ 102-41.200 Are there special disposal provisions for firearms that are seized and forfeited for a violation of the National Firearms Act?

Yes, firearms seized and forfeited for a violation of the National Firearms Act (26 U.S.C. 5801-5872) are subject to the disposal provisions of 26 U.S.C. 5872(b). When there is no contrary judgment or action under such forfeiture, GSA will direct the disposition of the firearms. GSA may—

- (a) Authorize retention for official use by the Treasury Department;
- (b) Transfer to an executive agency for use by it; or
- (c) Order the firearms destroyed.

FORFEITED DISTILLED SPIRITS, WINE, AND BEER

§ 102-41.205 Do we report all forfeited distilled spirits, wine, and beer to GSA for disposal?

(a) Yes, except do not report distilled spirits, wine, and beer not fit for human consumption or for medicinal, scientific, or mechanical purposes. When reporting, indicate quantities and kinds, proof rating, and condition for shipping. GSA (3FPD) may transfer such property to another Federal agency for official purposes, or donate it to eligible eleemosynary institutions for medicinal purposes only.

(b) Forfeited distilled spirits, wine, and beer that are not retained for official use by the seizing agency or transferred or donated to eligible recipients by GSA must be destroyed. You must document the destruction with a record of the time and location, property description, and quantities destroyed.

DRUG PARAPHERNALIA

§ 102-41.210 What are some examples of drug paraphernalia?

Some examples of drug paraphernalia are—

- (a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;

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(e) Roach clips (objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);

(f) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs;

(m) Ice pipes or chillers;

(n) Wired cigarette papers; or

(o) Cocaine freebase kits.

§ 102-41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?

No, only report drug paraphernalia that has been seized and forfeited for a violation of 21 U.S.C. 863. Unless statutorily authorized to do otherwise, destroy all other forfeited, voluntarily abandoned, or unclaimed drug paraphernalia. You must ensure the destruction is performed in the presence of two witnesses (employees of your agency), and retain in your records a signed certification of destruction.

§ 102-41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State Agency for Surplus Property (SASP)?

Yes, but GSA will only transfer or donate forfeited drug paraphernalia for law enforcement or educational purposes and only for use by Federal, State, or local authorities. Federal or State Agencies for Surplus Property (SASP) requests for such items must be processed through the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407. The recipient must certify on the transfer document that the drug paraphernalia will be used for law enforcement or educational purposes only.

§ 102-41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?

Yes, you must ensure that such drug paraphernalia does not lose its identity

as forfeited property. Reports of excess and transfer documents for such drug paraphernalia must include the annotation that the property was seized and forfeited under 21 U.S.C. 863.

§ 102-41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?

No, you must release donated drug paraphernalia directly to the donee as designated on the transfer document.

§ 102-41.235 May we sell forfeited drug paraphernalia?

No, you must destroy any forfeited drug paraphernalia not needed for transfer or donation and document the destruction as specified in § 102-41.215.

PART 102-42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Subpart A—General Provisions

Sec.

102-42.5 What does this part cover?

DEFINITIONS

102-42.10 What definitions apply to this part?

CARE, HANDLING AND DISPOSITION

102-42.15 Under what circumstances may an employee retain a foreign gift or decoration?

102-42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

102-42.25 Who retains custody of gifts and decorations pending disposal?

102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

102-42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

APPRAISALS

102-42.40 When is a commercial necessary?

102-42.45 What is my agency's responsibility for establishing procedures for obtaining an appraisal?

102-42.50 What types of appraisals may my agency consider?

102-42.55 What does the employing agency do with the appraisal?

SPECIAL DISPOSALS

- 102-42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?
- 102-42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?
- 102-42.70 Who handles gifts and decorations received by the President or Vice President or a member of their family?
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Subpart B—Utilization of Foreign Gifts and Decorations

- 102-42.80 To whom do “we”, “you”, and their variants refer?
- 102-42.85 What gifts or decorations must we report to GSA?
- 102-42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?
- 102-42.95 How do we report gifts and decorations as excess personal property?
- 102-42.100 How can we obtain an excess gift or decoration from another agency?
- 102-42.105 What special information must be included on the transfer request (SF 122)?
- 102-42.110 How must we justify a transfer request?
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Subpart C—Donation of Foreign Gifts and Decorations

- 102-42.120 When may gifts or decorations be donated to State agencies?
- 102-42.125 How is donation of gifts or decorations accomplished?
- 102-42.130 Are there special requirements for the donation of gifts and decorations?

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

- 102-42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?
- 102-42.140 How is a sale of a foreign gift or decoration to an employee conducted?
- 102-42.145 When is public sale of a foreign gift or decoration authorized?
- 102-42.150 What happens to proceeds from sales?
- 102-42.155 Can foreign gifts or decorations be destroyed?

AUTHORITY: 40 U.S.C. 121(c); 5 U.S.C. 7342.

SOURCE: 65 FR 45539, July 24, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 102-42.5 What does this part cover?

This part covers the acceptance and disposition of gifts of more than minimal value and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government, you should refer to § 102-36.405 of this subchapter B.

[71 FR 28778, May 18, 2006]

DEFINITIONS

§ 102-42.10 What definitions apply to this part?

The following definitions apply to this part:

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition of *employee* (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of *employee*.

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Employing agency means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

Foreign government means:

(1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;

(2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and

(3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

Minimal value means a retail value in the United States at the time of acceptance of \$350 or less, except that GSA will adjust the definition of minimal value in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index

for the immediately preceding 3-year period.

[65 FR 45539, July 24, 2000, as amended at 68 FR 56496, Sept. 4, 2002; 70 FR 2318, Jan. 12, 2005; 71 FR 28778, May 18, 2006; 73 FR 7475, Feb. 8, 2008; 76 FR 30551, May 26, 2011]

CARE, HANDLING AND DISPOSITION

§ 102-42.15 Under what circumstances may an employee retain a foreign gift or decoration?

Employees, with the approval of their employing agencies, may accept and retain:

(a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property of the U.S. Government, not the employee, and must be reported.

(b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

§ 102-42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

(1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.

(2) The employing agency determines if it will keep the gift or decoration for official use.

(3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under § 102-42.95.

(4) If GSA does not transfer the gift or decoration during Federal utilization screening, the employee may purchase the gift or decoration (see § 102-42.140).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through

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State Agencies for Surplus Property (SASP) under part 102-37 of this subchapter B.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under part 102-38 of this subchapter B.

(b) *Monetary gifts.* When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or

(ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

§ 102-42.25 Who retains custody of gifts and decorations pending disposal?

(a) The employing agency retains custody of gifts and decorations that employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which employees decline to purchase, or decorations that are not retained for official use or returned to donors.

NOTE TO §102-42.25(b): GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101-42 of this title.

§ 102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

§ 102-42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

No, all transfers of gifts and decorations to Federal agencies or donation

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through SASPs will be without reimbursement. However, the employing agency may require the receiving agency to pay all or part of the direct costs incurred by the employing agency in packing, preparation for shipment, loading, and transportation.

APPRAISALS

§ 102-42.40 When is an appraisal necessary?

An appraisal is necessary when—

(a) An employee indicates an interest in purchasing a gift or decoration. In this situation, the appraisal must be obtained before the gift or decoration is reported to GSA for screening (see 102-42.20); or

(b) GSA requires the employing agency to obtain an appraisal of a gift or decoration that the agency has retained for official use and no longer needs before accepting the agency's report of the item as excess personal property; or

(c) The policy of one's own agency requires it, pursuant to 5 U.S.C. 7342(g).

NOTE TO §102-42.40 paragraphs (a) and (b): Refer to §102-42.50 for how appraisals under these two situations are handled.

[74 FR 2396, Jan. 15, 2009]

§ 102-42.45 What is my agency's responsibility for establishing procedures for obtaining an appraisal?

The employing agency is responsible for establishing its own procedure for obtaining an appraisal that represents the value of the gift in the United States. This applies to all gifts, even when the recipient wishes to retain and/or purchase the gift. Appraisals are required for gifts that are personalized (e.g., Books signed by the author, Gifts personally labeled).

[74 FR 2396, Jan. 15, 2009]

§ 102-42.50 What types of appraisals may my agency consider?

Your agency may allow—

(a) Written commercial appraisals conducted by an appraisal firm or trade organization; and

(b) Retail value appraisals where the value of the gift may be ascertained by

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reviewing current and reliable non-discounted retail catalogs, retail price lists, or retail Web site valuations.

[74 FR 2396, Jan. 15, 2009]

§ 102-42.55 What does the employing agency do with the appraisal?

When an appraisal is necessary under § 102-42.40, the employing agency must include the appraisal with the Standard Form (SF) 120, Report of Excess Personal Property, and send it to GSA in accordance with the requirements of § 102-42.95. By attaching the appraisal, the employing agency is certifying that the value cited is the retail value/appraised value of the item in the United States in U.S. dollars on the date set forth on the appraisal.

[74 FR 2396, Jan. 15, 2009]

SPECIAL DISPOSALS

§ 102-42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Commission on Art and Antiquities of the United States Senate under 5 U.S.C. 7342(e)(2). GSA is responsible for disposing of gifts or decorations received by Members and employees of the House of Representatives.

§ 102-42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

If the Commission on Art and Antiquities does not dispose of a gift or decoration, then it must be reported to GSA for disposal. If GSA does not dispose of a gift or decoration within one year of the Commission's reporting, the Commission may:

- (a) Request that GSA return the gift or decoration and dispose of it itself; or
- (b) Continue to allow GSA to dispose of the gift or decoration in accordance with this part.

§ 102-42.70 Who handles gifts and decorations received by the President or Vice President or a member of their family?

The National Archives and Records Administration normally handles gifts

and decorations received by the President and Vice President or a member of the President's or Vice President's family.

[71 FR 28778, May 18, 2006]

§ 102-42.75 How are gifts containing hazardous materials handled?

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 101-42 of this title.

Subpart B—Utilization of Foreign Gifts and Decorations

§ 102-42.80 To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the employing agency.

§ 102-42.85 What gifts or decorations must we report to GSA?

You must report to GSA gifts of more than minimal value, except for monetary gifts that have no historic or numismatic value (see § 102-42.20), or decorations the employee is not authorized to retain that are:

- (a) Not being retained for official use or have not been returned to the donor; or
- (b) Received by a Senator or a Senate employee and not disposed of by the Commission on Art and Antiquities of the United States Senate.

§ 102-42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

Non-monetary gifts or decorations that were retained for official use must be reported to GSA as excess property within 30 days after termination of the official use.

§ 102-42.95 How do we report gifts and decorations as excess personal property?

You must complete a Standard Form (SF) 120, Report of Excess Personal Property, and send it to the General Services Administration, Utilization and Donation Program Division

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(QSCA), Washington, DC 20406. Conspicuously mark the SF 120, "FOREIGN GIFTS AND/OR DECORATIONS", and include the following information:

Entry	Description
(a) Identity of Employee.	Give the name and position of the employee.
(b) Description of Item	Give a full description of the gift or decoration, including the title of the decoration.
(c) Identity of Foreign Government.	Give the identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration.
(d) Date of Acceptance	Give the date the gift or decoration was accepted by the employee.
(e) Appraised Value	Give the appraised value in United States dollars of the gift or decoration, including the cost of the appraisal. (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.)
(f) Current Location of Item.	Give the current location of the gift or decoration.
(g) Employing Agency Contact Person.	Give the name, address, and telephone number of the accountable official in the employing agency.
(h) Purchase Interest or Donation Recommendation.	Indicate whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee.
(i) Administration	Give the Administration in which the gift or decoration was received (for example, Clinton Administration).
(j) Multiple Items	Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (for example, a tea set, a necklace and matching earrings) as a single line item.

[65 FR 45539, July 24, 2000, as amended at 74 FR 2396, Jan. 15, 2009]

§ 102-42.100 How can we obtain an excess gift or decoration from another agency?

To obtain an excess gift or decoration from another agency, you would complete a Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, for the desired item(s) and submit the form to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

§ 102-42.105 What special information must be included on the SF 122?

Conspicuously mark the SF 122, "FOREIGN GIFTS AND/OR DECORATIONS", and include all information furnished by the employing agency as specified in §102-42.95. Also, include on the form the following statement: "At such time as these items are no longer required, they will be reported to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, and will be identified as foreign gift items and cross-referenced to this transfer order number."

§ 102-42.110 How must we justify a transfer request?

You may only request excess gifts and decorations for public display or other bona fide agency use and not for the personal benefit of any individual. GSA may require that transfer orders be supported by justifications for the intended display or official use of requested gifts and decorations. Jewelry and watches that are transferred for official display must be displayed with adequate provisions for security.

§ 102-42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

When transferred gifts and decorations are no longer required for official use, report these gifts and decorations to the GSA as excess property on a SF 120, including the original transfer order number or a copy of the original transfer order.

Subpart C—Donation of Foreign Gifts and Decorations**§ 102-42.120 When may gifts or decorations be donated to State agencies?**

If there is no Federal requirement for the gifts or decorations, and if gifts were not sold to the employee, GSA may make the gifts or decorations available for donation to State agencies under this subpart and part 102-37 of this subchapter B.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

§ 102-42.125 How is donation of gifts or decorations accomplished?

The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (e.g., units of State or local governments and eligible non-profit organizations) by:

(a) Completing a Standard Form (SF) 123, Transfer Order Surplus Personal Property, and submitting it to General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 123 with the words, "FOREIGN GIFTS AND/OR DECORATIONS."

(b) Attaching an original and two copies of a letter of intent to each SF 123 submitted to GSA. An authorized representative of the proposed donee must sign and date the letter, setting forth a detailed plan for use of the property. The letter of intent must provide the following information:

(1) Identifying the donee applicant, including its legal name and complete address, its status as a public agency or as an eligible nonprofit tax-exempt activity, and the name, title, and telephone number of its authorized representative;

(2) A description of the gift or decoration requested, including the gift's commercially appraised value or estimated fair market value if no commercial appraisal was performed; and

(3) Details on the planned use of the gift or decoration, including where and how it will be used and how it will be safeguarded.

§ 102-42.130 Are there special requirements for the donation of gifts and decorations?

Yes, GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or incorporate by reference the following:

(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) There must be a period of restriction which will expire after the gift or decoration has been used for the purpose stated in the letter of intent for a period of 10 years, except that GSA may restrict the use of the gift or decoration for such other period when the inherent character of the property justifies such action.

(c) The donee must allow the right of access to the donee's premises at reasonable times for inspection of the gift or decoration by duly authorized representatives of the SASP or the U.S. Government.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

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(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Do or allow anything to be done that would contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the period of restriction, the donee must promptly notify the General Services Administration, Property Management Division (FBP), Washington, DC 20406, through the SASP, and upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP, and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the period of restriction, the SASP may demand return of the gift or decoration and, upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay to the U.S. Government the fair market value of the gift or decoration at the time of its loss, theft, or at the time that it became unrecoverable as determined by GSA. If the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

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Subpart D—Sale or Destruction of Foreign Gifts and Decorations

§ 102-42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?

The Secretary of State or the Secretary's designee must approve any sale of foreign gifts or decorations (except sale of foreign gifts to the employee, that is approved in this part).

§ 102-42.140 How is a sale of a foreign gift or decoration to an employee conducted?

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the commercially appraised value of the gift. Sales must be conducted and documented in accordance with part 102-38 of this subchapter B.

[68 FR 56496, Sept. 4, 2003, as amended at 71 FR 28778, May 18, 2006]

§ 102-42.145 When is public sale of a foreign gift or decoration authorized?

A public sale is authorized if a foreign gift or decoration:

- (a) Survives Federal utilization screening;
- (b) Is not purchased by the employee;
- (c) Survives donation screening; and
- (d) Is approved by the Secretary of State or designee.

§ 102-42.150 What happens to proceeds from sales?

The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

§ 102-42.155 Can foreign gifts or decorations be destroyed?

Yes, foreign gifts or decorations that are not sold under this part may be destroyed and disposed of as scrap or for their material content under part 102-38 of this subchapter B.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]