

Federal Management Regulation

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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]