

agency in which the donee is located. Copies of distribution documents shall be forwarded to the adjoining State agency.

(e) *Termination of agreements.* Cooperative agreements entered into between GSA and a State agency may be terminated by either party upon 60 days written notice to the other party. Termination of an agreement between a Federal agency designated by GSA and a State agency, and interstate cooperative distribution agreements, shall be as mutually agreed to by the parties.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16115, May 5, 1988]

#### § 101-44.207 Eligibility.

This section sets forth the standards, guidelines, and procedures for determination of eligibility for public agencies and eligible nonprofit tax-exempt activities in each State to participate in the surplus personal property donation program, to receive surplus property through a State agency, and to use this property for the purposes authorized by the Federal Property and Administrative Services Act of 1949, as amended, and by section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d).

(a) *Definitions.* For the purposes of this section, the following terms shall have the meanings set forth in this section:

(1) *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 universities, colleges, or secondary schools; or another recognized accrediting association.

(2) *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. An educational institution or program may be considered

approved if its instruction and credits therefor are accepted by three accredited or State-approved institutions, or if it meets the academic or instructional standards prescribed for public schools in the State; i.e., the organizational entity or program is devoted primarily to approved academic, vocational (including technical or occupational), or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year as prescribed by the State and employs a full-time staff of qualified instructors. 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. A health institution or program may be considered as approved when a State body having authority under law to establish standards and requirements for public health institutions renders approval thereto whether by accreditation procedures or by licensing or such other method prescribed by State law. In the absence of an official State approving authority for a public health institution or program or educational institution or program, the awarding of research grants to the institution or organization by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization may constitute approval of the institution or program provided all other criteria are met.

(3) *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 which is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

(4) *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.

(5) *College* means an approved or accredited public or nonprofit institution

of higher learning offering organized study courses and credits leading to a baccalaureate of higher degree.

(6) *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.

(7) *Economic development* means a program or programs carried out or promoted by a public agency for public purposes which involve directly or indirectly efforts to improve the opportunities of a given political area for the successful 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.

(8) *Education* means a program or programs to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or other given political area. These programs may be conducted by schools, including preschool activities and child care centers, colleges, universities, schools for the mentally retarded or physically handicapped, educational radio and television stations, libraries, or museums. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

(9) *Educational institution* means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs, including research for any such programs, such as a child care center, school, college, university, school for the mentally retarded, school for the physically handicapped, or an educational radio or television station.

(10) *Educational radio station* means a radio station licensed by the Federal Communications Commission and operated exclusively for noncommercial

educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code of 1954.

(11) *Educational television station* means a television station licensed by the Federal Communications Commission and operated exclusively for non-commercial educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code of 1954.

(12) *Health center* means an approved public or nonprofit facility utilized by a health unit for the provision of public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

(12.1) *Homeless individual* means 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. For purposes of this regulation, the term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(13) *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.

(14) *Library* means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

(14.1) *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. Licensing may be required for educational or public health programs such as occupational training, physical or mental health rehabilitation services, or nursing care. Licenses frequently must be renewed at periodic intervals.

(15) *Medical institution* means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization the primary function of which is the furnishing of public health and medical services to the public at large or promoting public health through the conduct of research for any such purposes, 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."

(16) *Museum* means a public or private nonprofit institution which is organized on a permanent basis essentially for educational or esthetic purposes and which, using a professional staff, owns or uses tangible objects, whether animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis either free or at a nominal charge. As used in this section, the term "museum" includes, but is not limited to, the following institutions if they satisfy all other provisions of this section: Aquariums and zoological parks; botanical gardens and arboretums; museums relating to art, history, natural history, science, and technology; and planetariums. For the purposes of this section, an institution uses a professional staff if it employs full time at least one qualified staff member who devotes his or her time primarily to the acquisition, care, or public exhibition of objects owned or

used by the institution. This definition of museum does not include any institution which exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution. For example, an institution which is engaged primarily in the sale of antiques, objets d'art, or other artifacts and which incidentally provides displays to the public of animate or inanimate objects, either free or at a nominal charge, does not qualify as a museum.

(17) *Nonprofit tax-exempt activity* means an institution or organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under the provisions of section 501 of the Internal Revenue Code of 1954.

(18) *Park and recreation* means a program or programs carried out or promoted by a public agency for public purposes which involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area. These facilities include but are not limited to parks, playgrounds and athletic fields, swimming pools, golf courses, nature facilities, and nature trails.

(18.1) *Provider of assistance to homeless individuals* means a public agency or a nonprofit, tax-exempt institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals, as defined in paragraph (a)(12.1) of this section. Property acquired through the donation program by such institutions or organizations must be used primarily for the program(s) operated to assist homeless individuals.

(19) *Public health* means a program or programs 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.

(20) *Public health institution* means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting a public health program or programs such as a hospital, clinic, health center, or medical institution, including research for any such program, the services of which are available to the public at large.

(21) *Public safety* means a program or programs 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 public police departments, sheriffs' offices, the courts, penal and correctional institutions and including juvenile facilities, State and civil defense organizations, and fire departments and rescue squads including volunteer fire departments and rescue squads supported in whole or in part with public funds.

(22) *Public purpose* means a program or programs carried out by a public agency which are 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, and public safety.

(23) *School* (except schools for the mentally retarded and schools for the physically handicapped) means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

(24) *School for the mentally retarded* means a facility or institution operated primarily to provide specialized

instruction to students of limited mental capacity. It must be public on nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction of the mentally retarded, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local governmental body.

(25) *School for the physically handicapped* means a school organized primarily to provide specialized instruction to students whose physical handicaps necessitate individual or group instruction. The schools must be public or nonprofit and operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the physically handicapped, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local governmental body.

(26) *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.

(27) *Programs for older individuals* means any State or local government agency or any nonprofit tax-exempt activity which receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act.

(b) *Eligibility of public agencies*—(1) *Public agency*. Surplus personal property may be donated through the State agency to any public agency in the State. A public agency, as defined in § 101-44.001-10, includes any:

(i) State or department, agency, or instrumentality thereof;

(ii) Political subdivision of the State, including any unit of local government or economic development district, or any department, agency, or instrumentality thereof;

(iii) Instrumentality created by compact or other agreement between States or political subdivisions;

(iv) Multijurisdictional sub-State districts established by or pursuant to State law; and

(v) Indian tribe, band, pueblo, or community located on a State reservation.

(2) *Public purpose.* Surplus personal property acquired through the State agency must be used by the public agency to carry out or to promote for the residents of a given political area one or more public purposes. While the act lists certain specific public purposes such as conservation, economic development, education, parks and recreation, public health, and public safety, this enumeration is not exclusive and is not intended to preclude the acquisition of donable surplus personal property by a public agency for other public purposes. In effecting fair and equitable distribution of property, based on the relative needs and resources of interested public agencies and other authorized donees and their ability to use the property, it is intended that the State agency give full and fair consideration to the requirements of public agencies for property necessary and usable for conservation, economic development, education, parks and recreation, public health and public safety, and other public purposes. Each public program is conducted by designated departments, agencies, or other instrumentalities of the State and/or local governments in carrying out either specific or diverse functions, with, in some cases, overlapping jurisdiction. Activities and functions involved in designated public programs may include but are not limited to the following:

(i) *Conservation.* State and local agencies and districts may be involved mutually in carrying out programs to conserve natural resources. Indian tribes or communities located on a State reservation may also be involved in conservation projects as well as other public programs such as economic development.

(ii) *Economic development.* Programs designed to develop the economy by establishing or expanding industry, commerce, or agriculture in a given geographic area and may include the economic development districts and other activities of public agencies involved in

activities such as municipal water and sewage departments operating sewage systems and waste treatment plants; State or local street or highway departments involved in construction or improvement of roads; port authorities and public airport commissions involved in harbor and public airport development; public transit authorities providing public transportation; environmental and antipollution programs of municipal, county, or State agencies; and State and local agencies involved in tourism development.

(iii) *Education.* Public schools, colleges, and universities are directly involved in the educational process. Special schools for the physically handicapped or the mentally retarded, as well as vocational and trade schools and educational radio and television stations, are among the educational institutions which directly contribute to the educational development of a district, town, city, county, or other governmental jurisdiction. Child care centers not only provide education benefits but also may promote economic development and public safety. Central administrative and service facilities of public school systems are equally necessary to successfully carry out and improve public education. Public libraries and museums also provide an essential educational and cultural service to a community.

(iv) *Park and recreation.* Agencies of the State, counties, cities, and other instrumentalities of local government are directly involved in the acquisition, development, improvement, and maintenance of public parks and other recreational facilities which benefit the general public. Public parks, playgrounds, swimming pools, and golf courses are some of the many public facilities which not only provide recreational benefits but also promote economic development, conservation, and public health.

(v) *Public health.* Public health services are directly provided by hospitals, clinics, health centers, and other designated medical institutions. Public agencies also provide broad public health benefits with regard to activities such as the control of communicable diseases, immunization, public health nursing, maternal and child

health programs, classes in health education and nutrition, and other health programs. These activities may be carried on in a clinic or subsidiary center in a community, in a person's home, in a school, or in a private business office of plant. Other vital programs carried on by State, county, or local health departments or other designated agencies directly protect public health and safety as well as promote economic development. These programs may include inspection of meat, food, and water; control and elimination of disease-carrying animals or insects by fogging, spraying, or other methods; water purification and water distribution systems; sewage treatment and disposal systems; garbage and trash disposal; and sanitary landfill facilities. These types of public health functions or services contribute directly to the general health and well being of the geographical area served, and public agencies may acquire surplus property to support these programs.

(vi) *Public safety.* Public safety includes not only law enforcement agencies but agencies involved in the prevention, control, and treatment of alcohol and drug abuse; agencies which provide services to children such as child care centers and activities serving neglected, dependent, abused, and delinquent children; and agencies and courts within the criminal justice system. Equally essential to public safety are State and local civil defense agencies and local fire departments and rescue squads. The availability of fire and rescue equipment at public airports is another illustration of an equally vital public safety requirement.

(vii) *Programs for older individuals.* State or local government agencies which receive funds appropriated for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act, or under titles VIII or X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act are eligible to receive surplus property through donation. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation serv-

ices, nutrition services, legal services, and multipurpose senior centers.

(c) *Eligibility of nonprofit tax-exempt activities.* Surplus personal property may be donated through the State agency to nonprofit tax-exempt activities, as defined in this section, within the State, such as:

- (1) Medical institutions;
- (2) Hospitals;
- (3) Clinics;
- (4) Health centers;
- (5) Providers of assistance to homeless individuals;
- (6) Schools;
- (7) Colleges;
- (8) Universities;
- (9) Schools for the mentally retarded;
- (10) Schools for the physically handicapped;
- (11) Child care centers;
- (12) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations;
- (13) Museums attended by the public;
- (14) Libraries, serving free all residents of a community, district, State or region; or
- (15) Organizations or institutions that receive funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV and title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act. Programs for older individuals include 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.

(d) *Educational and public health purposes.* Surplus personal property acquired through the State agency must be used by a nonprofit educational or public health institution or organization for purposes of education or public health as defined in this section, including research for any such purpose. While this does not preclude the use of donated property by an eligible nonprofit educational or public health institution or organization for a related or subsidiary purpose incident to the institution's overall program, the property must be used essentially for the

primary educational or public health function for which the activity receives donable property and not for a non-related or commercial purpose. The enumeration of institutions and organizations in § 101-44.207(c) is descriptive and not exclusive and is not intended to preclude determinations by the State agency of eligibility for other nonprofit educational and public activities. These activities may include but are not limited to:

(1) Geriatric centers which are public health institutions and which furnish public health and medical services to the aged;

(2) Nursing homes which are public health institutions providing skilled nursing care and related medical services to individuals admitted because of illness, disease, or physical or mental infirmity. (A nursing home may be considered as a qualified public health institution if it is either a:

(i) Nursing home operated in connection with a hospital;

(ii) Facility for long-term care of convalescents, chronic disease patients, or other persons who require skilled nursing care and related medical services in which the nursing care and medical services are prescribed by or are performed under the general direction of persons licensed to practice medicine or surgery in the State; or

(iii) Nursing home certified to provide health services to medicaid or medicare patients under the provisions of the Social Security Act. (Nursing homes which do not meet these requirements or the primary purpose of which is domiciliary care will not be considered as qualifying as public health institutions); and

(3) Alcohol and drug abuse treatment centers which are clinics or medical institutions and which provide for the diagnosis, treatment, and rehabilitation of alcoholics and drug addicts. These centers should have available professional medical staffs on a regular visiting basis.

(e) *Determinations of eligibility.* The State agency is responsible for determining that an applicant is eligible as a public agency or a nonprofit educational or public health institution or organization to participate in the pro-

gram and receive donations of surplus personal property.

(f) *Application for eligibility.* Each State agency shall maintain a complete and current record for each eligible donee. This record shall include the following:

(1) *Application.* The application shall set forth the:

(i) Legal name and the address of the applicant;

(ii) Status of the applicant as a public agency or as an eligible nonprofit tax-exempt activity (evidence shall be included in the file that the applicant is a public agency or has been determined to be nonprofit and tax-exempt under section 501 of the Internal Revenue Code of 1954);

(iii) Details concerning the applicant's public program activities or, when it is an eligible nonprofit tax-exempt activity, the specific programs and facilities operated by the applicant (Sufficient details and specifics should be available so that the State agency can determine the program eligibility qualifications of the applicant, including any of those activities defined in § 101-44.207(a.); and

(iv) Evidence that the applicant is approved, accredited, or licensed, when it is a requirement of one or more of the applicant's programs, or certification of funding when the applicant is a nonprofit tax-exempt activity that conducts programs for older individuals.

(2) *Authorization.* A written authorization signed by the chief administrative officer or executive head of the donee activity, or a resolution by the governing board or body of the donee activity, which shall designate one or more representatives to act for the applicant acquiring donable property from the State agency, to obligate any necessary funds of the applicant for this purpose, and to execute the State agency distribution document including terms, conditions, reservations, and restrictions that the State agency or GSA may establish on the use and disposal of the property.

(3) *Assurance.* Necessary assurances that the applicant will comply with GSA regulations on nondiscrimination as set forth in subpart 101-6.2 and part

101-8 must be provided in the format prescribed by GSA.

(g) *Needs and resources.* In order that the State agency in distributing property can give fair and equitable consideration to the relative needs and resources of the donees within the State and their ability to use the property, the State agency may require each applicant, when submitting an application for eligibility determination, to provide a statement on the types and kinds of equipment, vehicles, machines, or other items of property needed by the applicant for use in the applicant's particular public programs, or, in the case of eligible nonprofit tax-exempt activities, the authorized programs to be served by the use of the equipment and the scope of these programs. The State agency may also request any financial information needed to evaluate the relative financial needs and resources of the applicant.

(h) *Maintaining eligibility.* The State agency shall update donee eligibility records as required to ensure continuing eligibility. Records for public agencies and nonprofit tax-exempt donees must be updated on a continuing basis, as frequently as necessary, to ensure that all documentation required to justify the donee's eligibility is current and accurate. Particular care must be taken to ensure that the donee resolution is current and that the statement of designated representatives contained therein is correct. When an eligible donee ceases to operate or when it loses its license, accreditation, or approval or otherwise fails to maintain its eligibility status, the State agency shall terminate its distribution of property to the activity.

(i) *Conditional eligibility.* In certain cases, newly organized activities may not have commenced operations or completed construction of their facilities, or may not yet have been approved, accredited, or licensed as may be required to qualify as eligible donees. In other cases, there may be no specific authority which can approve, accredit, or license the applicant as required for qualification. In these cases, the State agency may accept letters from public authorities, either local or State, which the State agency deems

competent (such as a board of health or a board of education) stating that the applicant otherwise meets the standards prescribed for approved, accredited or licensed institutions and organizations. In the case of educational activities, letters from three accredited or approved institutions that students from the applicant institution have been and are being accepted may be deemed sufficient by the State agency. In the case of public health institutions or organizations, licensing may be accepted by the State agency as evidence of approval in States where there is no authority which can as a legal or as a policy matter, approve hospitals, clinics, health centers, or medical institutions, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution. If the construction of an applicant's facility or physical plant has not been completed, the State agency, after evaluating the progress and potential of the applicant, may at its discretion make available surplus items of property which can be immediately utilized at this point in the applicant's program. Under no circumstances shall conditional eligibility be granted to a potentially eligible nonprofit tax-exempt applicant before the State agency has received from the applicant a copy of 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 of 1954.

[42 FR 56003, Oct. 20, 1977, as amended at 43 FR 38009, Aug. 25, 1978; 45 FR 56809, Aug. 26, 1980; 53 FR 16115, May 5, 1988; 53 FR 47197, Nov. 22, 1988; 58 FR 39666, July 26, 1993]

**§101-44.208 Property distributed to donees.**

(a) *Distribution document.* Donation of surplus personal property shall be accomplished by the use of a prenumbered State agency distribution document which shall include the:

(1) Certifications and agreements required of the donee by the State agency, including an agreement to 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