

Federal Property Management Regulations

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§101-44.205(f) of this chapter); otherwise, firearms must be delivered directly to the place of destruction to be destroyed by either the donee or the State agency. Destruction must be such that each complete firearm is rendered completely inoperable and incapable of being made operable for any purpose except for the recovery of basic material content in accordance with paragraph (c) of this section. The donee and a representative from the State agency, or designee, must both state in writing that the firearms were so destroyed and the original signed statement must be maintained by the State agency.

(4) Surplus firearms approved for donation must be shipped or transported directly from the holding Federal agency to the donee, and may not be stored in the State agency warehouse; or, arrangements may be made by the State agency for the designated donee to make a direct pickup at the holding agency.

(5) Firearm ammunition may not be donated.

(c) *Sales requirements.* Surplus firearms may be sold only for scrap after total destruction by crushing, cutting, breaking, or deforming to be performed in a manner to ensure that the firearms are rendered completely inoperative and to preclude their being made operative. Such sale shall be conducted under subpart 101-45.3.

(d) *Foreign gifts of firearms.* Firearms reported to GSA as foreign gifts may be offered for transfer to Federal agencies, including law enforcement activities. Foreign gifts of firearms shall not be donated. Such gifts not required for Federal use may be sold only to the gift recipient at the discretion of GSA. A certification that the purchaser shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Firearms not transferred to a Federal agency or sold to the recipient shall be disposed of in accordance with paragraph (c) or (e) of this section.

(e) *Abandonment and destruction of firearms.* Firearms shall not be abandoned. Destruction of firearms is subject to the requirements set forth in paragraph (c) of this section. Such de-

struction shall also be accomplished under the provisions of subpart 101-45.9, §101-42.406 and, when applicable, §101-42.1102-8.

(f) *Abandoned and forfeited firearms.* In addition to the requirements of this part 101-42, forfeited or voluntarily abandoned firearms shall be subject to the provisions of part 101-48.

[57 FR 39121, Aug. 28, 1992, as amended at 64 FR 40772, July 28, 1999]

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

AUTHORITY: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

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

§101-43.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For information on the disposition of excess personal property previously contained in this part, see FMR part 36 (41 CFR part 102-36).

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AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 42 FR 56003, Oct. 20, 1977, unless otherwise noted.

§ 101-44.000 Scope of part.

This part prescribes policies and methods governing the donation of surplus personal property located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and the donation of foreign excess personal property designated for return to the United States. Additional guidelines regarding the donation of hazardous materials and certain categories of property are prescribed in part 101-42.

[57 FR 39136, Aug. 28, 1992]

§ 101-44.001 Definitions of terms.

For the purposes of this part 101-44 the following terms shall have the meanings set forth in this section.

§ 101-44.001-1 Agricultural commodity.

Agricultural commodity means a product resulting from the cultivation of the soil or husbandry on farms and in the form customarily marketed by farmers.

§ 101-44.001-2 [Reserved]

§ 101-44.001-3 Donable property.

Donable property means surplus property under the control of an executive

agency (including surplus personal property in working capital funds established under 10 U.S.C. 2208 or in similar management-type funds) except:

(a) Such property as may be specified from time to time by the Administrator of General Services;

(b) Surplus agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling to assist him in carrying out his responsibilities with respect to price support or stabilization;

(c) Property in trust funds; or

(d) Nonappropriated fund property.

§ 101-44.001-4 Donee.

Donee means a service educational activity; a State, political subdivision, municipality, or tax-supported institution acting on behalf of a public airport; a public agency using surplus personal property in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; an eligible nonprofit tax-exempt educational or public health institution or organization; the American National Red Cross; a public body; an eleemosynary institution; or any State or local government agency, and any nonprofit organization or institution, 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.

[53 FR 16106, May 5, 1988]

§ 101-44.001-5 [Reserved]

§ 101-44.001-6 Local government.

Local government means a government, or administration of a locality, within a State or a possession of the United States.

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§ 101-44.001-7 [Reserved]

§ 101-44.001-8 Motor vehicle.

Motor vehicle means a conveyance self-propelled or drawn by mechanical power, designed to be principally operated on the streets and highways in the transportation of property or passengers.

§ 101-44.001-9 No commercial value.

No commercial value means a determination that property has neither utility nor monetary value (either as an item or as scrap).

[53 FR 16106, May 5, 1988]

§ 101-44.001-10 Public agency.

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.

§ 101-44.001-11 Public body.

Public body means any State, territory, or possession of the United States; any political subdivision thereof; the District of Columbia; the Commonwealth of Puerto Rico; any agency or instrumentality of any of the foregoing; any Indian tribe; or any agency of the Federal Government.

§ 101-44.001-12 Service educational activity.

Service educational activity means any educational activity designated by the Secretary of Defense as being of special interest to the armed services; e.g., maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

§ 101-44.001-13 State.

State means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Is-

lands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 16106, May 5, 1988]

§ 101-44.001-14 State agency.

State agency means the agency in each State designated under State law as responsible for the distribution within the State of all donations of surplus property to public agencies and eligible nonprofit tax-exempt activities.

[53 FR 16106, May 5, 1988]

§ 101-44.002 Requests for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection in accordance with subpart 105-60.3 of this title.

[53 FR 16106, May 5, 1988]

Subpart 101-44.1—General Provisions

§ 101-44.101 Withdrawal of donable property.

Surplus personal property set aside or approved for donation may be withdrawn for use by the holding agency with the prior approval of GSA. Holding activities may withdraw such property to meet their essential valid requirements in emergency situations without prior approval of GSA, but shall notify GSA immediately of such actions. The GSA regional office will advise the State agency or donee which applied for the property at the time a withdrawal is approved by GSA.

[53 FR 16106, May 5, 1988]

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§ 101-44.102 Responsibilities of holding agencies.

The role of agencies, other than State agencies, holding Federal property pending donation shall be limited to the following:

(a) Holding agencies shall cooperate fully with all agencies and their duly accredited representatives authorized to participate in the donation program in locating, screening and inspecting surplus personal property for donation. Upon reasonable request, holding agencies shall make available to these agencies or their representatives complete information regarding the quantity, description, condition, and location of donable property in their inventories. Holding agencies, however, need not prepare nor mail reports or listings not otherwise required by their procedures.

(b) Each holding agency shall annotate nonreportable personal property records to indicate to authorized State agencies, donee representatives or responsible Federal officials the date of the surplus determination by the holding agency.

(c) Pending donation, each holding agency shall be responsible for performing, and bearing the cost for, the care and handling of its property. Direct costs incurred by the holding agency in the actual packing, preparation for shipment, and loading of property incident to the donation may be reimbursable. Holding agencies may waive the amount involved as being uneconomical or impractical to collect. Where such charges are incurred, they shall be reimbursed promptly by the State agency or designated donee upon appropriate billing. Overhead or administrative costs or charges shall not be included.

(d) Holding agencies shall provide a period of 21 calendar days following the surplus release data for donation screening in accord with §101-44.109. During this period, a holding activity shall not take for its own use any property in its custody, except as provided in §101-44.101.

(e) Surplus property set aside for donation (see §101-44.109) shall be retained by the holding agency for a period not to exceed 42 calendar days from the surplus release date, pending

receipt of an approved Standard Form (SF) 123, Transfer Order Surplus Personal Property, from GSA and firm instructions for pickup or shipment of the property. The transferee is responsible for removing the property or for making arrangements with common carriers for its shipment. Property disposal officers or other representatives of holding activities shall not act as the agent or shipper for transferees in this regard. Upon receipt of the approved SF 123 and instructions for pickup or shipment, the holding activity shall promptly notify the transferee or the transferee's designated agent of the availability of the property. At the end of the 42-day period, the holding agency may proceed with the disposal of the property if the approved SF 123 and pickup or shipping instructions have not been received.

(f) Surplus property shall not be released by a holding activity for donation until the activity has received an SF 123 bearing the signed approval of the appropriate GSA official.

[53 FR 16106, May 5, 1988]

§ 101-44.103 [Reserved]

§ 101-44.104 Costs incurred incident to donation.

Direct costs incurred by the holding agency in packing, loading, or preparing the property for shipment shall be borne by the State agency or the designated donee. Where such costs are incurred, they shall be reimbursed promptly by the State agency or designated donee upon appropriate billing, unless the holding agency waives the amount involved as being uneconomical or impractical to collect.

[53 FR 16107, May 5, 1988]

§ 101-44.105 Assistance in major disaster relief.

(a) Upon declaration by the President of an emergency or a major disaster, surplus equipment and supplies may be donated to State and local governments for use and distribution by them for emergency or major disaster assistance purposes in accordance with the directions of the Federal Emergency Management Agency (FEMA) pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288) and Executive Order 12148, as

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amended. All donations of surplus personal property for major disaster assistance purposes require the prior approval of GSA, except where property already transferred for donation is donated to eligible donees by the State agency.

(b) When Federal surplus property in the custody of a State agency is requested by the State official in charge of disaster operations, and certified by FEMA as being usable and needed, the State agency will release the property to the authorized State official.

(c) Reimbursement to the State agency releasing surplus property for disaster assistance will be made by the State receiving the property. If reimbursement is sought, the State agency should coordinate and make arrangements with the State official in charge of disaster relief for reimbursement for services provided. In addition to services rendered, State agencies are entitled to reimbursement of documented expenses originally incurred in the care and handling of the property, including the screening, transporting, and receipt of property made available for disaster relief.

(d) Property previously obtained from or through the State agency for disaster relief purposes, and not used or no longer required, shall be returned to the State agency. Such property received by the State agency will be accounted for and disposed of in the same manner as any other property approved for donation under normal circumstances.

(e) Federal assistance under the Disaster Relief Act of 1974 is terminated upon notice to the Governor of the State by the Director, FEMA, or at the expiration of time periods prescribed in FEMA regulations, whichever occurs first.

[53 FR 16107, May 5, 1988]

§ 101-44.106 [Reserved]

§ 101-44.107 Donation of property withdrawn from sale.

Surplus personal property which is being offered for sale may be withdrawn and approved for donation: *Provided*, The property was not previously made available for donation or such action is not harmful to the sale, as

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jointly determined by GSA and the holding or selling agency. Withdrawal must be made before the award of such property. The State agency or donee requesting withdrawal of property from sale for purposes of donation shall submit the request to GSA for consideration and coordination with the selling agency. The request shall include a justification and a statement of whether the property had been available for screening during the authorized donation screening period.

§ 101-44.108 Donation of special categories of property.

The Administrator of General Services is authorized under section 203(j)(4) of the Federal Property and Administrative Services Act of 1949, as amended, as circumstances warrant, to impose appropriate conditions on the donation of property having characteristics that require special handling or use limitations. In exercising his discretion the Administrator may, a case-by-case basis, prescribe additional restrictions covering the handling or use of such property.

§ 101-44.108-1 Medical materials and supplies and shelf-life items.

(a) Medical materials and supplies consisting of drugs, biologicals, reagents, or controlled substances shall be donated in accordance with the provisions of §§ 101-42.1102-3 and 101-42.1102-5.

(b) Non-restricted medical materials and supplies may be donated in accordance with the provisions of this part 101-44.

(c) In the case of restricted medical materials and supplies (medical items that must be dispensed or used only by a licensed, registered, or certified individual) requested by a State agency, the SF 123 shall contain a statement that:

(1) The listed property will be transferred from the holding agency directly to the designated donee;

(2) The intended donee is licensed and authorized to administer and dispense such items or is authorized to store the items; and

(3) The State agency will obtain a certification from the donee indicating that:

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(i) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(ii) Adequate facilities are available to effect full accountability and proper storage of the items in accordance with Federal, State, and local statutes governing their acquisition, storage, and accountability; and

(iii) The administration or use of the items requested will comply with the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301-394).

(d) A State agency shall not pick up or store in its distribution center, surplus restricted medical materials and supplies. This property shall be transferred from the holding agency directly to the designated donee.

(e) Shelf-life items and medical materials and supplies held for national emergency purposes, and determined to be surplus in accordance with § 101-43.307-13, shall be made available for donation screening as provided in § 101-44.109.

[57 FR 39136, Aug. 28, 1992]

§ 101-44.108-2 Donation of aircraft.

This section provides procedures and conditions for the donation of aircraft which are not classified for reasons of national security and after removal of lethal characteristics. The requirements of this paragraph apply to the donation of any fixed- or rotary-wing aircraft with a unit acquisition cost of \$5,000 or more, but do not apply to the donation of individual aircraft components, accessories, parts, or appurtenances not attached to or an integral part of an aircraft. Combat-type aircraft shall not be donated for flight use.

(a) *Plan of utilization.* To assist GSA in the allocation and transfer of available surplus aircraft, each SF 123 submitted to GSA for donation of an aircraft covered by this section shall include 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. The letter of intent shall provide the following information:

(1) A description of the aircraft requested, including the type, model or

size, and the serial number, if it is known;

(2) A detailed description of the donee's program and the number and types of aircraft currently owned by the donee;

(3) Whether the aircraft is to be used for flight purposes or nonflight purposes (including ground instruction or simulation use), and details of the planned utilization of the aircraft including but not limited to how the aircraft will be used, its purpose, how often and for how long. If for flight purposes, specify source of pilot(s) and where aircraft will be housed. When the aircraft is requested for cannibalization (recovery of parts and components), the letter of intent should 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, etc.); and

(4) 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.

(b) *Donation of aircraft to public agencies and eligible nonprofit tax-exempt activities.* (1) For the donation of an aircraft to a donee eligible in accordance with the provisions of subpart 101-44.2, the following documentation shall be submitted to GSA along with the SF 123 and the donee's letter of intent:

(i) A letter, signed and dated by the State agency director, confirming and certifying the applicant's eligibility and containing the State agency's evaluation of the applicant's ability to use the aircraft 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;

(ii) A State agency distribution document, signed and dated by the authorized representative of the donee, and containing the terms, conditions, and restrictions prescribed by GSA; and

(iii) A conditional transfer document, signed by both the donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA. The conditional transfer document may include additional

State agency imposed terms, conditions, and restrictions on the use of the aircraft which are consistent with any Federal requirements or the State plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, shall be modified, amended, waived, released, or abrogated by the State agency without the prior written approval of GSA.

(2) Donation of aircraft to public agencies and eligible nonprofit tax-exempt activities shall be subject to the following terms, conditions, and restrictions:

(i) The donee shall apply to the Federal Aviation Administration (FAA) for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee's application for registration shall include a fully executed copy of the conditional transfer document and a copy of its letter of intent. If the aircraft is to be flown as a civil aircraft, the donee must obtain an FAA Standard Airworthiness Certificate within 12 months of receipt of the aircraft. The donee shall provide the State agency and GSA with a copy of the FAA registration and the Standard Airworthiness Certificate.

(ii) The aircraft shall 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 State agency and GSA and a copy of the amendment recorded with FAA.

(iii) Combat-type aircraft, as designated by DOD, shall not be donated for flight purposes. The restrictions on combat-type aircraft shall be in perpetuity and shall not be released by the State agency without the prior written approval of the GSA Central Office.

(iv) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the aircraft shall, at the option of GSA, revert to the United States of America. The donee, at the option of GSA, shall be liable to the United

States of America for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the aircraft at the time of any unauthorized transaction or use, as determined by GSA.

(v) If, during the period of restriction, the aircraft is no longer suitable, usable, or further needed by the donee for the purpose for which it was acquired, the donee shall promptly notify the State agency and request disposal instructions. Disposal instructions shall not be issued by the State agency except with the prior written concurrence of GSA.

(vi) In the case of any noncombat aircraft donated for nonflight use, and for all combat-type aircraft (unless certified by the Defense Reutilization and Marketing Office that the historical records and data plate have already been removed by the disposal agency), the State agency shall acquire from the donee, within 30 calendar days of the donee's receipt of the aircraft, the 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) and the manufacturer's aircraft data plate and turn them over to the GSA allocating office. GSA will forward the records and data plates to the Chief, Aircraft Manufacturing Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

(c) *Donation of aircraft to service educational activities.* (1) Donation of a surplus Department of Defense (DOD) aircraft to a donee eligible in accordance with the provisions of subpart 101-44.4 shall be made in accordance with the terms of the individual donation agreement executed by DOD and the service educational activity. The SF 123, with the donee's letter of intent and any additional required documentation specified, shall be submitted for approval to the appropriate GSA regional office.

(2) Surplus DOD aircraft which have been demilitarized may be approved for donation by GSA to service educational activities for nonflight use, for static display, or for ground instruction and simulation purposes.

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(3) Surplus DOD noncombat and commercial-type aircraft may be approved for donation by GSA at the request of DOD for flight purposes by service educational activities subject to the following use conditions and agreements which DOD shall require of the donee:

(i) The aircraft shall be used solely in connection with the plan of utilization set forth in the donee's letter of intent unless DOD authorizes a change in writing to the donee's plan of utilization.

(ii) The donee shall apply to FAA for registration (and shall provide FAA with a copy of its letter of intent) within 30 calendar days of receipt of the aircraft and shall forward a copy of the registration to DOD and GSA.

(iii) The aircraft must be certified as airworthy prior to being put into flight use. The donee shall furnish a copy of the FAA Standard Airworthiness Certificate to DOD and GSA.

(d) *Donation of aircraft for public airport purposes.* (1) When a surplus aircraft is donated to a donee eligible in accordance with the provisions of subpart 101-44.5, the SF 123 and the donee's letter of intent shall be processed by and through FAA and submitted to GSA for approval.

(2) Surplus cannibalized or demilitarized aircraft may be approved for donation by GSA to a public airport for use in firefighting and rescue training.

(3) Flyable aircraft will not be approved for donation for public airport purposes.

(e) *Donation of condemned or obsolete combat aircraft for historical purposes.* Requests for donation of aircraft for historical purposes (museums, static display, etc.) from veterans' organizations, soldiers' monument associations, State museums, incorporated nonprofit educational museums, municipal corporations (cities, boroughs or incorporated towns), and Sons of Veterans Reserve shall be referred to DOD for processing in accordance with 10 U.S.C. 2572 (see §101-44.901).

[53 FR 16108, May 5, 1988]

§§ 101-44.108-3—101-44.108-4 [Reserved]

§ 101-44.108-5 Bedding and upholstered furniture.

An SF 123 submitted to a GSA regional office for donation of bedding and upholstered furniture will not be approved by GSA unless the State agency or other donee includes a statement that the material will be treated in accordance with applicable State law and regulations before reuse.

§ 101-44.108-6 Tax-free alcohol or specially denatured alcohol.

(a) When tax-free or specially denatured alcohol is requested for donation, the donee must possess a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, to acquire the property.

(b) An SF 123 submitted to a GSA regional office for donation of tax-free or specially denatured alcohol will not be approved by GSA unless the appropriate BATF use-permit number is shown.

(c) A State agency shall not store tax-free or specially denatured alcohol in distribution centers. This property shall be transferred from holding activities direct to the designated donee.

§ 101-44.108-7 Franked and penalty envelopes and paper with official letterhead.

An SF 123 submitted to a GSA regional office for donation of paper with an official letterhead or for donation of franked or penalty envelopes on which the penalty indicia has not been obliterated will not be approved by GSA unless the State agency or other donee includes a statement certifying that the indicia and all other Federal Government markings on the envelopes and paper will be completely obliterated before they are used.

§ 101-44.108-8 [Reserved]

§ 101-44.108-9 Donation of vessels.

This section provides procedures and conditions for the transfer for donation

of any donable vessel which is 50 feet or more in length and has a unit acquisition cost of \$5,000 or more. Each SF 123 submitted to GSA for donation of a vessel which is 50 feet or more in length shall be accompanied by a letter of intent from the applicant donee setting forth in detail the proposed use of the vessel. Each donee, as a condition of the donation, shall agree also to fully comply with all Federal, State, and local laws, regulations, ordinances, and requirements, including, but not limited to those pertaining to environmental pollution, health and safety, and to obtain all necessary permits, licenses, certificates, and clearances applicable to acquiring, owning, transporting, repairing, using, operating, and maintaining the vessel. Each donee, as a condition of the donation, shall agree to obtain documentation of the vessel under the applicable laws of the United States and the several States, to maintain this documentation at all times, and to record each document with the U.S. Coast Guard at the port of documentation of the property within 30 calendar days after acquisition of the vessel, and in compliance with applicable Federal and State laws.

(a) *Plan of utilization.* To assist GSA in the allocation and transfer of available surplus vessels, each SF 123 submitted to GSA for donation of a vessel covered by this §101-44.108-9 shall include 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. The letter of intent shall provide the following information:

(1) A description of the vessel requested, including the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if it is known;

(2) A detailed description of the donee's program and the number and types of vessels currently owned by the donee;

(3) A detailed description of the planned utilization of the vessel including, but not limited to, how the vessel will be used, its purpose, how often and for how long and whether the vessel is to be operated on the waterways or not (including ground display,

permanent mooring or permanent land use). If for waterway purposes, a source of pilot(s) and where the vessel will be docked must be specified. When the vessel is requested for permanent docking on water or land, the letter of intent should provide details of the process including the time to complete the process.

(4) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, number of visitors and students if for museum purposes, etc.) supporting the donee's need for the vessel.

(b) *Donation of vessels to public agencies and eligible nonprofit tax-exempt activities.* (1) For the donation of a vessel to a donee eligible in accordance with the provisions of subpart 101-44.2, the following documentation shall be submitted to GSA along with the SF 123 and the donee's letter of intent:

(i) A letter, signed and dated by the State agency director, confirming and certifying the applicant's eligibility and containing the State agency's evaluation of the applicant's ability to use the 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;

(ii) A State agency distribution document, signed and dated by the authorized representative of the donee, and containing the terms, conditions, and restrictions prescribed by GSA; and

(iii) A conditional transfer document, signed by both the donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA in accordance with §101-44.108-9(b)(2). The conditional transfer document may include additional State agency imposed terms, conditions, and restrictions on the use of the vessel which are consistent with any Federal requirements or the State plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, shall be modified, amended, waived, released, or abrogated by the State agency without the prior written approval of GSA.

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(2) Donation of vessels to public agencies and eligible nonprofit tax-exempt activities shall be subject to the following terms, conditions, and restrictions:

(i) The donee shall, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel to the U.S. Coast Guard at the port of documentation of the vessel, under the applicable laws of the United States and regulations promulgated thereunder and the applicable laws of the several States governing the documentation of said property, and agrees to maintain at all times such documentation. The donee's application for documentation shall include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee shall provide the State agency and GSA with evidence that the documentation is accomplished including a copy of all approved documentation.

(ii) The vessel shall 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 State agency and GSA and a copy of the amendment recorded with the U.S. Coast Guard at the port of documentation of the vessel.

(iii) Naval vessels of the following categories shall not be donated: Battleships, cruisers, aircraft carriers, destroyers and submarines (40 U.S.C. 472 (d)).

(iv) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the vessel shall, at the option of GSA, revert to and become the property of the United States of America. The donee, at the option of GSA, shall be liable to the United States of America for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the vessel at the time of any unauthorized transaction or use, as determined by GSA.

(v) If, during the period of restriction, the vessel is no longer suitable, usable, or further needed by the donee for the purpose for which it was ac-

quired, the donee shall promptly notify the State agency and request disposal instructions. Disposal instructions shall not be issued by the State agency except with the prior written concurrence of GSA.

(c) *Donation of vessels to service educational activities.* (1) Donation of a surplus Department of Defense (DOD) vessel to a donee eligible in accordance with the provisions of subpart 101-44.4 shall be made in accordance with the terms of the individual donation agreement executed by DOD and the service educational activity and this §101-44.108-9. The SF 123, with the donee's letter of intent and any additional required documentation specified, shall be submitted for approval to the appropriate GSA regional office.

(2) The vessel shall be used solely in connection with the plan of utilization set forth in the donee's letter of intent unless DOD authorizes a change, in writing, to the donee's plan of utilization.

(3) The donee shall apply to the U.S. Coast Guard at the port for documentation of the vessel (and shall provide the U.S. Coast Guard with a copy of its letter of intent) within 30 calendar days of receipt of the vessel and shall forward a copy of evidence of the documentation to DOD and GSA.

[53 FR 16109, May 5, 1988]

§ 101-44.108-10 [Reserved]

§ 101-44.109 Donation screening period.

(a) A period of 21 calendar days following the surplus release date (see §101-43.001-32) shall be provided to set aside surplus reportable and nonreportable property determined to be usable and necessary for donation purposes in accordance with the provisions of subparts 101-44.2, 101-44.4, and 101-44.5. Reportable surplus property will be set aside for donation when an application for donation, with an informational copy to the holding activity, is submitted to a GSA regional office for approval within the donation screening period. Nonreportable surplus property will be set aside for donation upon notification to a holding activity within the donation screening period by a responsible Federal official, a State

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agency representative, or an authorized donee representative that the property is usable and necessary for donation purposes.

(b) During the prescribed 21-day donation screening period, applications for surplus personal property will be processed by GSA regional offices in the following sequence:

(1) Department of Defense personal property reportable to GSA in accordance with §101-43.304 will be reserved for public airport donation during the first 5 calendar days of the donation screening period and during the next 5 days for service educational activities. During the remaining portion of the donation screening period, the property will be available on a first-come, first-served basis to all applicants.

(2) Executive agency personal property, other than personal property of the Department of Defense, reportable to GSA in accordance with §101-43.304 will be reserved for public airport donation during the first 5 calendar days of the donation screening period. During the remaining portion of the donation screening period, the property will be available on a first-come, first-served basis. This property is not available for donation to service educational activities.

(3) All executive agency personal property not reportable to GSA will be made available for donation on a first-come, first-served basis. Service educational activities are not eligible for donation of nonreportable surplus personal property of executive agencies other than the Department of Defense.

(c) To expedite donation, surplus property may be made available on a case-by-case basis for onsite screening. The GSA regional office will contact the holding agency not later than 15 calendar days before the date the onsite screening is scheduled to start so that all necessary arrangements can be coordinated and agreed upon. If time will not permit separate utilization and donation screening, concurrent screening may be scheduled with Federal, State, and donee representatives in attendance. Participation in donation screening sessions is limited to State agency employees and representatives of eligible donees designated by the State agency to attend such ses-

sions. Screening sessions shall be conducted as follows:

(1) The donation screening period should be limited to the specific dates established by the agreement for the particular location. Generally, a screening period of 5 workdays should be sufficient.

(2) The property selected for the screening sessions should be set aside in separate areas and properly identified by the holding activity to facilitate screening sessions.

(3) GSA or State agency representatives should be present during all screening sessions.

(4) The State agency representatives shall prepare SF 123, Transfer Order Surplus Personal Property (illustrated at §101-44.4901-123), at the site on a daily basis for the property selected. Upon approval by the GSA representative, the holding activity shall release the property. Processing of donation documents shall be expedited to ensure that the property is removed at the end of each daily session to the maximum extent possible. Property shall not be released until the transfer is approved by the GSA representative, except in emergency situations as determined by GSA.

(5) When onsite screening is conducted on a continuing day-to-day basis under procedures previously agreed to in writing by GSA, the holding agency, and the State agency concerned, the presence of authorized GSA or State agency representatives is not required. Arrangements may provide for processing the essential donation documents after the onsite screening and removal of the property.

[53 FR 16110, May 5, 1988]

§ 101-44.110 Transfer orders for surplus personal property.

All transfers of surplus personal property to the State agencies for donation for authorized purposes to public agencies and eligible nonprofit tax-exempt activities, to service educational activities, and to public airports shall be accomplished by use of Standard Form (SF) 123, Transfer Order for Surplus Personal Property, and SF 123-A, Transfer Order-Surplus Personal Property (Continuation Sheet). The original and five copies of

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SF 123 shall be forwarded to the appropriate GSA regional office for approval, and an informational copy shall be sent to the holding activity.

[45 FR 56808, Aug. 26, 1980]

§ 101-44.111 Preparation and processing of transfer orders.

Applications for transfer shall be prepared and processed in accordance with the instructions illustrated at §101-44.4901-123-1.

§ 101-44.112 Approval or disapproval of transfer orders.

(a) Surplus property shall not be released by a holding activity for donation until it has received an SF 123 bearing the signed approval of the appropriate GSA official. In approving the SF 123, GSA regional offices will comply with the sequence established in §101-44.109. An SF 123 which is not fully or properly prepared may be returned to the applicant or held in suspense until the required information is made available. In those cases in which property is specifically requested for the purpose of cannibalization, the following statement shall be included on the SF 123: "Item(s) _____ requested for cannibalization." Cannibalization requests may be approved when it is clear 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. Upon the request of a GSA regional office, the State agency (or the donee in the case of property donated under the provisions of subparts 101-44.4 or 101-44.5) shall submit any additional information required to support and justify a donation application. The SF 123 will not automatically be held to the end of the screening period, but will be approved and distributed as expeditiously as possible. An SF 123 received after the end of the donation screening period may be approved if the property is still available, and the holding activity has agreed to set the property aside pending receipt of donation approval.

(b) An SF 123 may be disapproved, in whole or in part, when it is determined that it is in the public interest to do so, when there is a substantive defect in the order, when the property is not surplus, or when a transfer of the prop-

erty to a Federal agency is pending. The applicant and the holding activity will be informed in writing why the SF 123 was disapproved. When a donation transfer is disapproved because of a pending Federal transfer and the transfer is not completed subsequently, the applicant will be advised to resubmit SF 123.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16111, May 5, 1988]

§ 101-44.113 Rejection of property approved for transfer.

When a State agency or donee determines prior to pickup or shipment that property approved for transfer cannot be utilized, it shall so notify, through appropriate channels, the GSA regional office which approved the transfer, and the property will be released by GSA for other disposal. The GSA regional office may advise any other State agency known to be interested in the property of its possible availability and may approve a transfer request for donation purposes provided the holding activity agrees to retain the property pending the approval.

§ 101-44.114 Pickup or shipment.

(a) Surplus property requested and set aside for donation will be retained by the holding agency for a maximum period of 42 calendar days from the surplus release date, pending receipt of the approved SF 123 and firm instructions for pickup or shipment of the property. At the end of this period, the holding activity may proceed with the sale or other authorized disposal of the property if the approved SF 123 and pickup or shipping instructions have not been received.

(b) Upon receipt of the approved SF 123 and instructions for pickup or shipment, the holding activity shall promptly notify the transferee or his designated agent of the availability of the property. The transferee or his agent shall remove the property within 15 calendar days from the date of notification of availability by the holding activity.

(c) The transferee is responsible for removing the property or for making arrangements with common carriers for its shipment. Property disposal officers or other representatives of holding

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activities shall not act as the agent or shipper for transferees in this regard.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16111, May 5, 1988]

§ 101-44.115 Overages and shortages.

(a) *Overages.* When a State agency, service educational activity (SEA), or public airport finds that it has received surplus property in excess of that listed on an approved SF 123, and the estimated fair market value or acquisition cost of the line items involved is less than \$500, it shall annotate its receiving and inventory records to document the overage. The annotation must include a description of the property, its estimated condition, the estimated fair market value (or acquisition cost if known), and the name of the holding activity from which the property was received. If property having an estimated fair market value or acquisition cost of \$500 or more is received, it shall be listed on an SF 123, and the SF 123 sent to the GSA regional office for approval. In the case of property received by a public airport, the SF 123 shall be forwarded to GSA through the Federal Aviation Administration (FAA).

(b) *Shortages.* When it is found that line items or portions of line items of property approved on an SF 123 were not received, and the total acquisition cost of the line items involved is less than \$300, the State agency, SEA, or public airport shall annotate its receiving and inventory records to document the shortage. The annotation must include a description of each line item of property, the acquisition cost, and the name of the holding activity. If the total acquisition cost is \$300 or more, a shortage report must be prepared and submitted to the GSA regional office for the region in which the holding activity is located. A copy of this report shall be sent to the holding activity. Shortage reports covering property approved for donation to a public airport should be forwarded to the GSA regional office through FAA.

(c) *Information.* Overages and shortages shall be reported, where required, within 90 calendar days of the date of transfer. The shortage report, or the SF 123 in the case of overages of \$500 or more, shall be signed by the responsible State agency or donee representa-

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tive and shall provide the following information.

(1) Name and address of the holding activity;

(2) All pertinent control numbers including the holding activity turn-in document number, the GSA control number if property was reported to GSA, and the State agency or donee transfer order number; and

(3) A description of each line item of property, whether it is a shortage or an overage, the condition code (estimated if an overage), the quantity and unit of issue, and the unit and total acquisition cost (estimated if an overage).

[53 FR 16111, May 5, 1988]

§ 101-44.116 Certification of screeners.

(a) All State agency and donee representatives wishing to visit Federal activities for the purpose of screening and selecting surplus personal property for donation in accordance with subparts 101-44.2, 101-44.4, and 101-44.5 must be authorized and certified by GSA. Requests for certification of donee screeners shall be submitted to GSA by the appropriate State agency for the purposes of subpart 101-44.2 by the Department of Defense (DOD) for the purposes of subpart 101-44.4, and by the Federal Aviation Administration (FAA) for the purposes of subpart 101-44.5.

(b) The agency recommending the designation of a donee screener shall prepare a request to inform GSA of the proposed designation and forward it for evaluation and approval to the GSA regional office serving the region in which the intended screener is located. (See §101-43.4802 for regional offices, addresses, and assigned areas.) The request shall state the name and address of the State agency or donee activity the prospective screener represents, and certify that the applicant is qualified to screen as an authorized representative of the cited organization. A list of the Federal installations the screener will be authorized to visit shall accompany each request. The list of Federal installations should be limited to those within the applicable State, except where there are particular reasons why State agency screeners or donee screeners should regularly visit installations outside the

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State. Special requests for State agency or donee screeners to visit installations outside the State or region on a regular or one-time basis may be authorized by the GSA regional offices involved. The recommending agency shall select qualified screeners representing public agencies and other eligible donee organizations within the State in order to expedite the movement of surplus property and enhance the opportunities of those public agencies and organizations to identify and select needed and useful items of property. GSA will give special consideration to requests of individual donees submitted through recommending agencies for allocation of specific items of property.

(c) Recommending agencies shall accompany each request for certification of a donee screener with GSA Form 2946, Screener's Identification (illustrated at §101-43.4902-2946). GSA Forms 2946 must contain the typed names of the screener's organization and sponsoring agency, the signature and type name of the proposed screener, an affixed passport-style photograph of the screener, and the signature of the sponsoring agency official.

(d) In order to avoid proliferation of screeners, the GSA regional office will review requests for donee screening authorizations to ensure that the number of screeners requested by each designated activity is reasonable in relationship to the scope of the donee's program and that the screeners are qualified to perform this service. Following review, the GSA regional office, if the request is approved will complete the GSA Form 2946 and return it to the recommending agency for issuance to the screener. Each GSA regional office will control the activities of donee screeners at Federal installations within its region. The regional office may screeners' visits or require a reduction in their number when it becomes evident that the volume of surplus personal property at an installation does not warrant the level of screening activity or that a proliferation of screeners is affecting adversely the installa-

tion's property disposal activity. All GSA Forms 2946 shall be recovered by the recommending agency upon expiration or termination of the screener's authorization and shall be forwarded to the validating GSA office for cancellation.

(e) Each State agency or other donee representative physically screening property at holding installations for the purpose of selecting property for donation shall possess a GSA Form 2946 validated by GSA as provided in this §101-44.116. However, representatives visiting holding activities in order to participate in onsite screenings in accordance with §101-44.109, or for the purpose of technical inspection, evaluation, and/or removal of specific property previously set aside or approved by GSA for donation, shall not be required to possess a GSA Form 2946.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16112, May 5, 1988]

§ 101-44.117 Recovery of property for Federal use.

Occasionally, Federal agencies may develop on an exigency basis requirements for personal property items derived from surplus sources in the possession of a State agency. The State agency should cooperate with GSA in the recovery of property to fulfill Federal needs. The transfer will be subject to payment by the acquiring agency of the costs of care and handling, including transportation that were incurred by the State agency initially acquiring this property.

§ 101-44.118 Nondiscrimination.

All transfers of surplus property to the State agencies for donation to public agencies and eligible nonprofit tax-exempt activities, to service educational activities, and to public airports are conditioned on full compliance with GSA regulations on nondiscrimination as set forth in subpart 101-6.2 and part 101-8.

[53 FR 16112, May 5, 1988]

§ 101-44.119 [Reserved]

Subpart 101-44.2—Donations to Public Agencies and Eligible Nonprofit Tax-Exempt Activities

§ 101-44.200 Scope of subpart.

This subpart prescribes the authorities, responsibilities, policies and methods governing the donation of surplus personal property within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to eligible recipients as established in §101-44.207.

[53 FR 16112, May 5, 1988]

§ 101-44.201 Authority.

(a) Section 203(j)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484) (hereinafter called the act), gives the Administrator of General Services discretionary power to prescribe the necessary regulations for, and to execute, the surplus property donation program. This authority empowers the Administrator to transfer executive agency controlled surplus property to the agency of each State government designated under State law to be responsible for all property transferred in accordance with this subpart and subpart 101-44.4.

(b) The property which may be transferred for donation includes all personal property which has been determined to be donable as defined in §101-44.001-3.

[53 FR 16112, May 5, 1988]

§ 101-44.202 State agency plan of operation.

Section 203(j)(4) of the act provides that State agencies shall be established and operated in accordance with detailed plans developed according to State law and conforming with provisions of the act. A State must have its plan of operation approved by the Administrator before it may have property transferred to it. The plan must assure that the State agency has the necessary organizational and oper-

ational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: Accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups.

(a) *State action.* The State plan of operation shall be developed by the State legislature, certified by the chief executive officer of the State, and submitted to the Administrator for acceptance.

(b) *General notice.* In accordance with the act no plan of operation and no major amendment thereof shall be filed with the Administrator until 60 calendar days after general notice of the proposed plan has been published, and interested persons have been given at least 30 calendar days during which to submit comments. In developing and implementing the plan the State shall take into consideration the relative needs and resources of all public agencies and other eligible institutions within the State. Assurance shall be provided in the State plan that such public notice and such time for public comment was provided prior to submission of the plan and that such consideration of relative needs and resources of all donees in the State was given in the preparation of the plan.

(c) *Specific assurances.* A State plan for the establishment and operation of a State agency for surplus property distribution to eligible donees shall provide the following information and assurances. (A State may include in its plan other provisions not inconsistent with the purposes of the act and the requirements of this part 101-44):

(1) *Authority.* The chief executive officer of the State shall submit the State plan of operation to the Administrator as follows:

(i) The chief executive officer shall submit the plan and certify that the State agency is authorized thereby to acquire, warehouse, and distribute surplus property to all eligible donees in the State, to enter into cooperative agreements pursuant to the provisions of §101-44.206, and to undertake other

actions and provide other assurances as are set forth in the plan of operation; and

(ii) Copies of existing State statutes and/or executive orders relative to the operational authority of the State agency shall accompany the State plan. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the State plan shall include also the opinion of the State's Attorney General regarding the existence of such authority.

(2) *Designation of State agency.* The plan shall designate a State agency which will be responsible for administering the plan throughout the State. The plan shall describe the responsibilities vested in the agency and shall provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. The plan shall also 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.

(3) *Inventory control and accounting systems.* The State plan shall require the State agency to use a management control and accounting system that will effectively govern the utilization, inventory control, accountability, and disposal of donable surplus property. The plan shall set forth the details of the inventory control and accounting system which will be used by the State agency.

(4) *Return of donated property.* The State plan shall require and set forth procedures for donees to return donable property to the State agency if such property while still usable, as determined by the State agency, 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 such purposes within 1 year of being placed in use.

(5) *Financing and service charges.* The State plan shall set forth the means and methods by which the State agency will be financed. When the State agency is authorized 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 shall be set forth in the plan. The charges shall be fair and equitable and based on services performed by the State agency, including but not limited to screening, packing, crating, removal, and transportation. When the State agency provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the charge levied by the State agency shall be minimal. The State plan shall provide for minimal charges to be assessed in such cases and include the bases of computation. When property is made available to nonprofit providers of assistance to homeless individuals, the State plan shall provide for this property to be distributed at a nominal cost for care and handling of the property. The plan of operation shall 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 State agency and the benefit of participating donees. Service charge funds may be used to cover direct and indirect costs of the State agency's operation, to purchase necessary equipment, and to maintain a reasonable working capital reserve. Such funds may be deposited or invested as permitted by State law, provided the plan of operation sets forth the types of depositories and/or investments contemplated. Service charge funds may be used for rehabilitating donable surplus property, including the purchase of replacement parts. Subject to State authority and the plan of operation, the State agency may expend service charge funds to acquire or improve office or distribution center facilities. When such acquisition or improvements are contemplated, the plan shall set forth what disposition is to be made of any financial assets realized upon the sale or other disposal of the facilities. When refunds of service charges in excess of the State agency's working capital reserve are to be made to participating donees, the plan shall so state 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.

(6) *Terms and conditions on donable property.* The State plan shall require the State agency to impose terms, conditions, reservations, and restrictions on the donee in the case of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. The specific terms, conditions, reservations, and restrictions which the State agency requires shall be set forth in the plan. In addition, the State plan shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of donable property other than items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles. Any such additional terms, conditions, reservations, and restrictions which the State agency elects to impose should be set forth in the plan. The State agency may amend, modify, or release such terms, conditions, reservations, or restrictions subject to the provisions of § 101-44.208(g), provided it sets forth in the plan the standards by which the State agency will grant any such amendments, modifications or releases. The State plan also shall provide assurance that the State agency will impose on the donation of a surplus item or items, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the Administrator may determine necessary because of the characteristics of the property, pursuant to § 101-44.108.

(7) *Nonutilized donable property.* The State plan shall provide that donable surplus property in the possession of the State agency which cannot be utilized by donees in the State shall be disposed of:

(i) Subject to the disapproval of the Administrator within 30 days after notice to him, through transfer by the State agency to another State agency or through abandonment or destruction where the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from sale (Transfers of nonutilized donable property and destruction or abandonment shall be accomplished by the State agency in accordance with the provisions of § 101-44.205); or

(ii) Otherwise, under such terms and conditions and in such a manner as may be prescribed by the Administrator pursuant to the provisions of § 101-44.205.

(8) *Fair and equitable distribution.* The State agency is responsible for the fair and equitable distribution of surplus personal property through donation to all eligible donees in the State. The State plan shall provide for distribution based on the relative needs and resources of public agencies and other eligible institutions and their abilities to utilize the property. The State plan shall set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. The State plan shall also require that the State agency, insofar as practicable, select property requested by a public agency or other eligible institution and, when so requested by the recipient, arrange for shipment of the property direct to the recipient.

(9) *Eligibility.* The State plan shall set forth procedures for the State agency to determine the eligibility of applicants for the donation of surplus personal property. Standard and guidelines for the determination of eligibility are provided in § 101-44.207.

(10) *Compliance and utilization.* The State agency shall effect utilization reviews for compliance by donees with the terms, conditions, reservations, and restrictions imposed by the State agency for any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. Such reviews also shall include a review of compliance by the donees with any special handling conditions or use limitations imposed on items of property by the Administrator, pursuant to § 101-44.108. The State plan shall set forth the provisions for and the proposed frequency of such reviews and shall provide adequate assurances that effective action shall be taken by the State agency to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. Reports on utilization reviews and compliance actions shall be prepared by the State agency. The State plan shall provide adequate assurance that the State agency shall initiate appropriate investigations of alleged fraud

in the acquisition of donated property or misuse of such property. The State agency shall immediately notify the Federal Bureau of Investigation (FBI) and GSA of any case involving alleged fraud. Further, GSA shall be advised of any misuse of donated property. The State agency shall assist GSA or other responsible Federal or State agencies in investigating such cases upon request.

(11) *Consultation with advisory bodies and public and private groups.* The State plan shall provide for consultation by the State agency with advisory bodies and public and private groups which can assist the State agency in determining the relative needs and resources of donees, the proposed utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees. Details of how the State agency will accomplish such consultation shall be set forth in the plan.

(12) *Audit.* The State plan shall provide for periodic internal audits of the operations and financial affairs of the State agency and compliance with the external audit requirements of Office of Management and Budget Circular No. A-128 "Audits of State and Local Governments." The State agency must provide the appropriate GSA regional office with two copies of any audit report made pursuant to the Circular, or with copies of those sections that pertain to the Federal donation program. An outline of the corrective actions which the State agency will take to comply with any exceptions or violations indicated by the audit, and the scheduled completion dates for these actions, must be submitted with the audit report. Periodically, GSA representatives may visit the State agency to coordinate program activities and review the State agency operations. GSA may, for appropriate reasons, conduct its own audit of the State agency following due notice to the chief executive officer of the State of the reasons for such audit. Financial records and all other books and records of the State agency shall be made available for inspection by representatives of GSA, the General Accounting Office, or other authorized Federal activities.

(13) *Cooperative agreements.* Section 203(n) of the act authorizes the Administrator (or the head of any Federal agency designated by him) to enter into cooperative agreements with State surplus property distribution agencies. The provisions of section 203(n) and the implementing regulations are set forth in §101-44.206. A State agency desiring to enter into such cooperative agreements or to renew or revise existing agreements shall affirm its intentions in the State plan and cite the authority called for in §101-44.202(c)(1).

(14) *Liquidation.* The State plan shall provide for the submission of a liquidation plan to the Administrator when a determination is made to liquidate the State agency. The liquidation plan shall be submitted before the actual termination of the State agency activities and shall include:

(i) Reasons for the liquidation;

(ii) A schedule for liquidating the agency and the estimated date of termination;

(iii) Method of disposing of surplus property on hand, consistent with the provisions of §101-44.205;

(iv) Method of disposing of the agency's physical and financial assets;

(v) Retention of all available books and records of the State agency for a 2-year period following liquidation; and

(vi) 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.

(15) *Forms.* Copies of distribution documents used by the State agency shall be included in the State plan.

(16) *Records.* The State plan shall provide for the retention of official records of the State agency for a period of not less than 3 years, provided that in cases involving property subject to restrictions for more than 2 years, records shall be kept 1 year beyond the specified period of restriction. In cases in which property is in compliance status at the end of the period of restriction, the State plan shall provide for the retention of the records for at least 1 year after the case is closed.

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(d) *Implementation.* (1) A State plan of operation developed by the State legislature and certified by the chief executive officer of the State shall be in effect and binding upon the State beginning with the date that the Administrator notifies the chief executive officer of the State that the plan conforms to the provisions of section 203(j)(4) of the act and the requirements of this part 101-44 and that allocation and transfer of donable surplus property to the State agency will commence. Such plan of operation shall remain in effect until such time as the Administrator may accept revisions.

(2) GSA may, from time to time, propose modifications or amendments to the provisions of this part 101-44. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State agencies to conform to any such regulatory changes affecting their operations.

(e) *Nonconformance.* When the Administrator determines that a State plan does not conform to the requirements of the act or the provisions of this part 101-44, or subsequently that the State agency does not operate in accordance with the provisions of the plan, allocation and transfer of surplus donable property may be withheld until the nonconformance is corrected.

[42 FR 56003, Oct. 20, 1977; 42 FR 61043, Dec. 1, 1977, as amended at 53 FR 11612, May 5, 1988; 53 FR 47197, Nov. 22, 1988]

§ 101-44.203 Allocation of donable property.

Allocation of donable property will be made by GSA on a fair and equitable basis. The following criteria will be applied by GSA in effecting allocation and transfer of surplus personal property among the States:

(a) Need and usability of property as reflected in selections of property by a State agency, including expressions of need and interest on the part of public agencies or other eligible donees within the State, transmitted through the State agency to GSA. Special consideration will be given by GSA to requests transmitted through the State agency by eligible donees for specific items of property.

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(b) Regions or States in greatest need of the type of property to be allocated, where a particular and important need is evidenced by a justification accompanying the expression of need.

(c) Extraordinary needs occasioned by disasters.

(d) The quantity of property of the type under consideration which was previously allocated to or is potentially available to a State agency from a more advantageous source.

(e) Performance of a State agency in effecting timely pickup or removal of property allocated to the State and approved for transfer by GSA.

(f) Performance of a State agency in effecting prompt distribution of property to eligible donees.

(g) Equitable distribution based on the existing condition as well as the original acquisition cost of the property available for donation.

(h) Equitable distribution based on the ratio of population and per capita income of each State.

§ 101-44.204 Certification and agreement by a State agency.

(a) *Certification.* A State agency, in making a request to GSA for the transfer of donable surplus personal property, shall certify that:

(1) It is the agency of the State designated under State law, and as such has legal authority within the meaning of section 203(j) of the act and GSA regulations, to receive surplus property for distribution within the State to eligible donees within the meaning of the act and GSA regulation;

(2) The property is usable and needed by a public agency for one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, public safety, and programs for older individuals, by an eligible nonprofit organization or institution which is exempt from taxation in the State under section 501 of the Internal Revenue Code of 1954, for the purpose of education or public health (including research for any such purpose) or by an eligible nonprofit tax-exempt activity for programs for older individuals;

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(3) When property is picked up by or shipped to a State agency, it has available adequate funds, facilities, and personnel to effect accountability, warehousing, proper maintenance, and distribution of the property; and

(4) When property is distributed by a State agency to a donee, or when delivery is made direct from a holding activity to a donee, the donee acquiring the property is eligible within the meaning of the act and GSA regulations, and that the property is usable and needed by the donee.

(b) *Agreement.* With respect to donable property picked up by or shipped to a State agency, the State agency shall agree to the following:

(1) The right to possession only is granted and the State agency will make prompt statewide distribution of the same, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the act and GSA regulations, after such eligible donees have properly executed the appropriate certifications and agreements established by the State agency and/or GSA.

(2) Title to the property shall remain in the United States of America although the State shall have taken possession thereof. Conditional title to the property shall pass to the eligible donee when the donee executes the certifications and appropriate agreements required by the State agency and has taken possession of the property.

(3) The State agency shall:

(i) Pay promptly the cost of care, handling, and shipping incident to taking possession of the property;

(ii) During the time that title remains in the United States of America, be responsible as a bailee for mutual benefit for the property from the time it is released to the State agency or to the transportation agent designated by the State agency; and

(iii) In the event of any loss of or damage to any or all of the property, file a claim and/or institute and prosecute to conclusion the proceedings necessary to recover for the account of the United States of America the fair market value of any of the property lost or damaged.

(4) Surplus property hereafter approved for transfer by GSA for donation shall not be retained by the State

agency for use in performing its functions unless the use of such property is authorized by GSA in accordance with the provisions of a cooperative agreement entered into between the State agency and GSA.

(c) *Interstate distribution.* Where an applicant State agency is acting under an interstate distribution agreement approved by GSA as an agent and authorized representative of an adjacent State with which it shares a common boundary the certifications and agreements required above shall also be made by the applicant State agency respecting the donees in the adjacent State to which distribution will be made and the property to be distributed in the adjacent State, and these certifications and agreements shall constitute the certifications and agreements of the adjacent State on whose behalf and as whose authorized representative the applicant State agency is acting.

[42 FR 56003, Oct. 20, 1977, as amended at 45 FR 56809, Aug. 26, 1980; 53 FR 16114, May 5, 1988]

§ 101-44.205 Property in the possession of a State agency.

(a) *Status.* Title to all donable property located in a State agency distribution center is vested in the United States of America. The right to possession only is granted to the State agency. The State agency may disassemble or cannibalize an item of donable property in its possession when it determines that the usable parts and components thereof have greater donation potential than that for which the complete item was originally manufactured. The State agency may retain and use surplus personal property in its possession for the purpose of performing its functions pursuant to the provisions of § 101-44.206.

(b) *Protection.* During the time title remains in the United States of America the State agency shall:

(1) Be responsible as a bailee for mutual benefit for surplus personal property transferred to it by GSA from the time it is released to the State or to the transportation agent designated by the State, and in the event of any loss of or damage to any or all of the property, the State agency shall promptly

notify GSA and file a claim and/or institute and prosecute to conclusion the proceedings that are necessary to recover, for the account of the United States of America, the fair market value of any property lost or damaged, less the cost of care and handling incurred by the State agency in acquiring the property;

(2) Maintain adequate provision for protecting property in its custody including protection against the hazards of fire, theft, vandalism, and weather; and

(3) Promptly notify appropriate law officials including the FBI and GSA of any damage to or loss of property in its custody due to theft, vandalism, arson, or other unusual circumstances and shall provide full information concerning the circumstances. GSA shall be informed of any other types of damages to or loss of property which is in the possession of the State agency.

(c) *Insurance.* It is GSA policy not to require a State agency to carry insurance as a condition for acquiring Federal surplus personal property for distribution to eligible recipients. However, when a State agency carries insurance against damage to or loss of property due to fire or other hazards and when loss of or damage to Federal surplus personal property occurs, GSA, on behalf of the United States of America, will be entitled to reimbursement from the State agency of the fair market value of the damaged or destroyed Federal property payable from the insurance proceeds, less the State agency's actual cost of acquiring and rehabilitating the property prior to its damage or destruction.

(d) *Distribution.* Surplus personal property in the custody of a State agency shall be distributed promptly to eligible donees within the State.

(e) *Direct shipment.* In order to reduce inventory, warehousing, and transportation costs and to ensure prompt utilization of donable surplus property, the State agency shall, insofar as practicable, when requested by the designated donee, arrange for or provide shipment of the property from the Federal holding agency direct to the recipient.

(f) *Transfer between States.* When a State agency determines that surplus

personal property in its possession cannot be utilized by eligible recipients within the State, it shall offer the property for transfer to surplus property agencies in other States. GSA encourages prompt transfer of property between the States. A State agency may arrange for visits to its distribution facilities by representatives of other State surplus property agencies to inspect and select unneeded property available for transfer. GSA regional offices, upon request, will assist in making known to other States unneeded property in one State which is available for transfer and in arranging and coordinating visits between State agencies. Transfers of property between States will be accomplished by processing SF 123, Transfer Order Surplus Personal Property, submitted by the requesting State through the GSA regional office for the releasing State. Transfers of unneeded surplus property between State agencies are subject to the disapproval of the Administrator within 30 days after notice to him.

(g) *Reporting unneeded property.* A State agency at any time may report unneeded usable property in its possession which is not required for transfer to another State in the GSA regional office for redistribution or disposal. In reporting property to GSA, the State agency shall:

(1) Provide the best possible description of each line item of property and its current condition code, quantity, and unit total acquisition cost;

(2) Identify the date of receipt by the State agency of each line item of property listed;

(3) Indicate those items which the State agency believes may be of interest to Federal agencies; and

(4) Provide certification of reimbursement claimed for each line item.

(h) *Reutilization.* Based on the information provided by the State agency, the GSA regional office may offer available property for recovery by Federal agencies. Any transfer order for that property will be approved by GSA and forwarded to the releasing State agency for appropriate action.

(i) *Disposal.* Sale of undistributed property in the possession of a State agency will be initiated by the GSA regional office in accordance with the

provisions of part 101-45. The GSA regional office will inform the State agency of the items to be sold and will work closely with the State agency in the preparation and prompt completion of the sale. Property available for sale may be turned in by a State agency to a GSA property or sales center with the approval of the GSA regional office which operates the center.

(j) *Reimbursement.* Reimbursement for costs of care and handling to a State agency with respect to the transfer or disposal of donable property in its possession will be authorized by GSA as follows:

(1) When a State agency acquires donable property by transfer from another State agency, reimbursement of costs incurred by the releasing State agency in acquiring the property, including packing, handling, and transportation costs, shall be established by mutual agreement between the two State agencies.

(2) When a Federal activity requests property from a State agency, costs incurred by the State agency in acquiring the property, including packing, handling, and transportation costs, shall be reimbursable at the time the property is transferred to the Federal activity. The SF 122 used in effecting the transfer must show the amount of reimbursement claimed by the releasing State agency.

(3) When donable property in the possession of a State agency is required for disaster assistance, reimbursement to the State agency will be governed by the provisions of §101-44.105.

(4) When disposing of undistributed property in the possession of a State agency by public sale, GSA may authorize reimbursement to the State agency for expenses related to care and handling incurred by the State agency in acquiring the property from within or outside the United States. Certification by the State agency of costs incurred is required and must be supported by documentation if requested by GSA. Reimbursement must not exceed the proceeds from the sale of the property. No reimbursement may be made to the State agency for actions subsequent to the receipt of property by the State agency from any source, including unloading, moving, repair-

ing, preserving, or storing. Reimbursement will not be authorized by GSA for property acquired from any source if the property has been in the possession of the State agency for a period of 2 years from the date it was received by the State agency until the date it was reported to GSA for disposal. Costs of transporting property to a location outside a State agency distribution facility are not reimbursable unless transportation was specifically required by GSA. The sale of property at a location outside the State distribution facility, however, does not preclude authorized reimbursement to the State agency. Reimbursement is limited to:

(i) Direct costs incurred by the Federal holding agency and billed to and paid by the State agency, including but not limited to packing, preparation for shipment, and loading; and

(ii) Transportation costs paid or otherwise incurred by the State agency and not reimbursed by a donee to the State agency for initially moving the property from the Federal holding agency to the State agency distribution facility or other point of receipt designated by the State agency.

(k) *Abandonment or destruction.* When a GSA regional office finds that a State agency has property in its possession that is unusable, the State agency may be instructed to proceed promptly with the abandonment or destruction of such property in accordance with the findings and the processes prescribed in subpart 101-45.9.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16114, May 5, 1988]

§ 101-44.206 Cooperative agreements.

This section provides policies and procedures for the establishment of cooperative agreements between GSA (or the head of any Federal agency designated by the Administrator of General Services) and a State agency for the use of property, facilities, personnel, and services, with or without payment or reimbursement and under the provisions of a cooperative agreement, for the use by the State agency of any surplus personal property in its possession subject to conditions imposed by the Administrator.

(a) *Authority.* Section 203(n) of the Federal Property and Administrative Services Act of 1949, as amended, provides that the Administrator (or the head of any Federal agency designated by him), for the purpose of carrying into effect the provisions of section 203(j) of the act, is authorized to enter into cooperative agreements with State surplus property distribution agencies designated in conformity with that section.

(b) *Use of property, facilities, personnel, and services.* (1) GSA may enter into a cooperative agreement with a State agency to furnish to the State agency available property, facilities, personnel, or services of GSA that are found by GSA and the State agency to be necessary and useful in assisting the State agency to distribute and use surplus donable personal property and otherwise to carry out the purposes of the act. Assistance may include furnishing Federal Telecommunications System (FTS) service on a reimbursable basis. It may also include furnishing available office space and related support such as office furniture and typewriters in GSA regional offices, property centers, or field offices to State agency screeners or administrative clerical employees to assist them in screening and processing donable property for donation. Assistance will be provided by GSA, to the extent possible, without reimbursement; however, any extraordinary costs incurred by GSA in providing assistance shall be on a reimbursable basis.

(2) GSA may enter into a cooperative agreement with a State agency for the purpose of the State agency furnishing available property, facilities, personnel, or services that are found by GSA and the State agency to be necessary and useful in assisting GSA to screen, transfer, and allocate surplus donable personal property and otherwise to carry out the purposes of the act. The provision of property, facilities, personnel, or services may be with or without payment or reimbursement to the State agency.

(3) When a Federal agency designated by GSA wishes to enter into a cooperative agreement with a State agency (or a State agency with a Federal agency) for the provision of property, facilities,

personnel, or services to carry into effect the donation provisions of the act, and the Federal agency and the State agency are mutually agreeable to an arrangement, GSA may concur in the establishment of a cooperative agreement and assist in its development. Payment or reimbursement shall be a matter for resolution between the Federal agency and the State agency.

(c) *Use of surplus property by a State agency.* A State agency may enter into a cooperative agreement with GSA providing for the retention by the State agency of items of surplus personal property transferred to it for distribution that are needed for the State agency in performing its donation functions. The State agency shall submit a listing of needed property from time to time to the appropriate GSA regional office. GSA will review the list to ensure that it is of the type and quantity of property which is reasonably needed and useful to the State agency in performing its function. Unless GSA disapproves the retention of the property within 30 days of receipt of the listing, title to the property shall vest in the State agency. Separate records shall be maintained by the State agency for the property.

(d) *Interstate cooperative distribution agreements.* GSA may concur in a cooperative agreement between two States which have contiguous boundaries whereby one State agency agrees to distribute donable surplus property to certain specified donees in the adjoining State. Agreements may be considered when the donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced than by their own State surplus property facilities. The payment or reimbursement of service charges by the donee shall be a matter for the mutual agreement between the State agencies. By entering into an interstate cooperative distribution agreement, the State agreeing to service donees in an adjoining State shall agree, as agent for the adjoining State agency, to:

- (1) Make certifications and agreements required by §101-44.204; and
- (2) Require the donee to execute the distribution of documents of the State

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

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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

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donation of the property, its use, or final disposition;

(2) Condition that the donee will return to the State agency, at its own expense, any donated property that is not placed in use for the purposes for which it was donated within 1 year of donation, or which ceases to be used by the donee for those purposes within 1 year of being placed in use, provided the property is still usable as determined by the State agency or the donee agrees to make the property available for retransfer or other disposal by the State agency;

(3) Terms, conditions, reservations, and restrictions, imposed by the State agency as provided in the State plan of operation on the use of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle;

(4) Terms, conditions, reservations, or restrictions imposed on any other donated item by the State agency;

(5) Conditions imposed by GSA, if any, requiring special handling or use limitations on donated property; and

(6) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

(b) *Donation purpose.* At the time donable surplus property is acquired by a donee, the donee's authorized representative shall indicate on the State agency's distribution document the primary purpose for which the property is to be used. In the case of public agencies, such usage could be for public purposes, such as conservation, economic development, education, parks and recreation, public health, programs for providing assistance to homeless individuals, public safety, museums, State Indians, or programs for older individuals. When the property is to be used for a combination of these purposes or for some other public purpose, the distribution document shall so indicate. With respect to nonprofit institutions or organizations, the purpose shall be shown as education, public health, programs for providing assistance to homeless individuals, museums, or programs for older individuals.

(c) *Conditional title.* Conditional title to surplus personal property shall pass to an eligible donee when the donee has executed the State agency distribution

document and taken possession of the property.

(d) *Utilization surveys.* The State agency shall make utilization surveys and reviews, as provided in the State plan of operation, to ensure that donated property during the period of restriction is being used by the donee for the purposes for which it was acquired.

(e) *Compliance.* The State agency shall take the necessary action to correct any noncompliance involving the use of donated property or to enforce the terms, conditions, reservations, and restrictions imposed on the use of the property, either by the State agency or GSA. Noncompliance may involve but not be limited to:

(1) Property not placed in use by the donee;

(2) Property no longer needed by the donee within the period of restriction;

(3) Unauthorized use of property by the donee during the period of restriction; or

(4) Unauthorized disposal of property by the donee during the period of restriction.

(f) *Enforcement of compliance.* Enforcement of compliance during the period of restriction may involve action by the State agency to:

(1) Place the property in proper use by the donee;

(2) Transfer the property to another donee having need and use therefor;

(3) Return the property to the State agency for distribution to other donees in the State or to another State agency having need and use therefor;

(4) Transfer the property through GSA to a Federal agency;

(5) Sell the property;

(6) Recover the gross proceeds realized from the disposal or the fair market value of the property, whichever is greater, when it is impossible or impracticable to recover property disposed of improperly during the period of restriction; and

(7) Recover the fair rental value if the property was used in an unauthorized manner during the period of restriction.

(g) *Coordination with GSA.* In enforcing compliance with the terms and conditions imposed on donated property, the State agency shall coordinate with GSA before undertaking the sale of, or

making demand for payment of the fair market value or fair rental value of donated property which:

(1) Is subject to any special handling condition or use limitation imposed by GSA or

(2) Has not been placed into use by the donee, for the purposes for which acquired, within 1 year of donation, or which has not been used for these purposes for 1 year after being placed in use.

(h) *Waivers.* A State agency may amend, modify, or grant releases for appropriate reasons from the terms, conditions, reservations, or restrictions it has imposed on the use of donated property, provided that it has set forth in the State plan of operation the standards by which actions shall be taken by the State agency. Amendments, corrections, or releases shall not be granted by the State agency, however, with respect to:

(1) The requirement that usable property be returned by the donee to the State agency 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 the State agency may grant authority to the donee to cannibalize or accomplish secondary utilization of property items subject to this requirement when the State agency determines that such action will result in increased utilization of the property and that the proposed action meets the standards prescribed in the State plan of operation with respect to amendments, modifications, or releases of the terms and conditions imposed on donated property; or

(2) Any special handling condition or use limitation imposed by GSA except with the prior approval of GSA.

(i) *Disposition of recovered property.* Personal property items returned to a State agency by a donee shall be redistributed by the State agency to other donees in the State or otherwise transferred or disposed of in accordance with the provisions of the State plan of operation if the property was returned (1) while subject to any special handling condition or use limitation imposed by GSA or (2) because the property had not been placed in use within 1 year of

donation for the purposes for which it was acquired, or not used for such purposes for 1 year after being placed in use. Personal property items returned by a donee while subject to terms, conditions, reservations, or restrictions imposed by the State agency may be redistributed, transferred, or disposed of as determined by the State agency.

(j) *Deposit of funds.* Any funds, including the gross proceeds of sale or the fair market value or the fair rental value of the property, derived by the State agency from enforcement of compliance involving a breach of any special handling condition or use limitation imposed on donated property by GSA, or involving donated property which had not been placed in use for the purposes for which it was acquired within 1 year of donation or not used for those purposes for 1 year after being placed in use by the donee, shall be remitted promptly by the State agency to GSA for deposit in the Treasury of the United States. The remittance shall be accompanied by supporting documentation indicating the source of the funds and essential background information. Funds derived by the State agency from the compliance action involving any term, condition, reservation, or restriction imposed on the donee by the State agency and funds derived by the State agency from any amendment, modification, or release thereof during the period of restriction may be retained and used by the State agency as provided in its plan of operation.

(k) *Reimbursement to donees.* (1) When a donee has used but no longer has a need or use for donated property which is subject to any special handling condition or use limitation imposed by GSA, and no breach of the conditions or limitations has occurred, the donee may be reimbursed on a prorated basis for the initial cost of repairs required to make the item usable when the property is transferred to a Federal agency or sold for the benefit and account of the United States of America.

(2) The State agency shall recommend for GSA approval the amount of reimbursement to which the donee is entitled, taking into consideration the benefit the donee has received from the

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use of the property and making appropriate deductions therefor. In the case of sale, reimbursement to a donee for any item of property shall not exceed the proceeds of the sale of the item. Reimbursement for property to be transferred to a Federal agency will be made a condition of the transfer by GSA.

[42 FR 56003, Oct. 20, 1977, as amended at 45 FR 56810, Aug. 26, 1980; 53 FR 16116, May 5, 1988; 53 FR 47198, Nov. 22, 1988]

Subpart 101-44.3—Donations of Foreign Excess Personal Property

§ 101-44.300 Scope of subpart.

This subpart prescribes the policies and methods governing the return of foreign excess personal property to the United States for donation.

§ 101-44.301 Holding agency responsibilities.

Prior to any sale, exchange, lease, or donation of medical materials or supplies pursuant to the provisions of section 402 (a) or (b) of the Federal Property and Administrative Services Act of 1949, as amended, foreign excess personal property not required for further Federal use as determined by GSA shall be made available by the holding agency for selection and return to the United States for donation for the purposes of subpart 101-44.2 and, with respect to property returned from Department of Defense (DOD) activities, for the purposes of subpart 101-44.4. Any foreign excess personal property returned to the United States which has been identified as having been processed, produced, or donated by the American National Red Cross shall be made available for donation to the American National Red Cross for charitable purposes in accordance with subpart 101-44.6, unless otherwise directed by the Administrator of General Services.

§ 101-44.302 Donation screening.

(a) To locate and select donable property, onsite representatives of State agencies duly accredited by GSA shall be permitted to screen foreign excess personal property available for return

to the United States. Property not required for further Federal use, as determined by GSA, shall be available for donation for a period of time of not less than 10 calendar days unless otherwise agreed to by the holding agency and GSA. To assist donation screening, GSA will provide State agency representatives with available advance information concerning foreign excess property to the maximum extent possible.

(b) Property returned to the United States for further Federal use and thereafter determined surplus shall be made available for donation by GSA for the purposes set forth in subpart 101-44.2 and, with respect to property returned from DOD activities and then determined surplus, for donation by GSA without priority for the purposes of subpart 101-44.4.

§ 101-44.303 Donation approval.

(a) The Administrator of General Services is authorized to make donations at his discretion for the purposes of this subpart.

(b) Standard Form (SF) 123, Transfer Order Surplus Personal Property (see § 101-44.4901-123), prepared in accordance with instructions (see § 101-44.4901-123-1) and signed by a duly authorized official, shall be forwarded to the appropriate GSA office for approval for property covered by this subpart. An information copy shall be forwarded to the holding activity.

(c) Unless otherwise authorized by GSA, personal property shall not be released by the holding agency for donation pursuant to this subpart until it has received SF 123 bearing the signed approval of the appropriate GSA office.

§ 101-44.304 Shipment.

The State agency representatives shall arrange for the shipment of personal property approved for donation and allocated by GSA to State agencies for distribution to eligible donees. Upon request, the holding agency may provide packing, handling, crating, and transportation services on a reimbursable basis.

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§ 101-44.305 Costs incurred incident to donation.

All transportation costs and other direct costs incurred incident to donation, including packing, handling, and crating, shall be borne by the State agency or the donee institution or organization receiving the property, including any costs incurred and billed by GSA or the holding agency. Care shall be exercised by the State agencies in the selection of property to ensure that it is economical to return the items to the United States for donation, giving full consideration to transportation and accessorial costs.

§ 101-44.306 Statistics and reports.

The Administrator of General Services will maintain data on the acquisition cost of all personal property approved by GSA for donation pursuant to this subpart and will report these data to the Congress annually and at such other times as he may deem desirable.

Subpart 101-44.4—Donations to Service Educational Activities

SOURCE: 63 FR 56090, Oct. 21, 1998, unless otherwise noted.

§ 101-44.400 What are the responsibilities of DOD, GSA, and State agencies in the Service Educational Activity (SEA) donation program?

(a) *Department of Defense.* The Secretary of Defense is responsible for:

(1) Determining the types of surplus personal property under DOD control that are usable and necessary for SEAs.

(2) Setting eligibility requirements for SEAs and making eligibility determinations.

(3) Providing surplus personal property under the control of DOD for transfer by GSA to State agencies for distribution to SEAs.

(b) *General Services Administration.* The Administrator of General Services is responsible for transferring surplus personal property designated by DOD to State agencies for donation to eligible SEAs.

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(c) *State agencies.* State agency directors are responsible for:

(1) Verifying that an activity seeking to obtain surplus DOD personal property is an SEA designated as eligible by DOD to receive surplus personal property.

(2) Locating, screening, and acquiring from GSA surplus DOD personal property usable and necessary for SEA purposes.

(3) Distributing surplus DOD property fairly and equitably among SEAs and other eligible donees in accordance with established criteria.

(4) Keeping a complete and accurate record of all DOD property distributed to SEAs and furnishing GSA this information as required in § 101-44.4701(e).

(5) Monitoring compliance by SEA donees with the conditions specified in § 101-44.208 (except §§ 101-44.208(a)(3) and (4), which do not apply to donations of surplus DOD personal property to SEAs).

§ 101-44.401 How is property for SEAs allocated and distributed?

(a) *Allocations.* GSA will make allocations in accordance with subpart 101-44.2 of this part, unless DOD requests that property be allocated through a State agency for donation to a specific SEA. Those requests will be honored unless a request is received from an applicant with a higher priority.

(b) *Distributions.* State agencies must observe all the provisions of § 101-44.208, except §§ 101-44.208(a)(3) and (4), when distributing surplus DOD personal property to eligible SEAs.

§ 101-44.402 May SEAs acquire non-DOD property?

Generally no. Surplus property generated by Federal civil agencies is not eligible for donation to SEAs, unless the SEAs also qualify under § 101-44.207 to receive donations of surplus personal property.

§ 101-44.403 What if a provision in this subpart conflicts with another provision in this part 101-44?

The provisions of this subpart shall prevail.

Subpart 101-44.5—Donations to Public Airports

§ 101-44.500 General.

Section 13(g) of the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1622(g)), provides for the disposal of surplus personal property, with the approval of the Administrator of General Services, as determined by the Administrator of the Federal Aviation Administration to be essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport.

§ 101-44.501 Agency authority.

(a) *Federal Aviation Administration.* The Administrator of the Federal Aviation Administration or his duly authorized representative shall:

(1) Determine requirements for surplus personal property of any State, political subdivision, municipality, or tax-supported institution for public airport use;

(2) Prescribe the eligibility requirements for public airport applicants and make determinations of eligibility;

(3) Determine whether available surplus personal property is essential, suitable, or desirable to fulfill the immediate or foreseeable future requirements for the development, improvement, operation, or maintenance of a public airport; and

(4) Determine and enforce compliance with the terms and conditions under which surplus personal property is transferred for public airport use.

(b) *General Services Administration.* Donations of surplus personal property for public airport purposes may be approved by the Administrator of General Services, at his discretion. Subject to that prior approval, surplus personal property determined essential, suitable, or desirable for public airport use by the Federal Aviation Administration (FAA) may be transferred direct to the specific public airport applicant.

§ 101-44.502 Application.

An applicant for surplus property to be used for public airport purposes shall make application to GSA using Standard Form 123, Transfer Order Surplus Personal Property, in accordance with § 101-44.110 for donation ap-

proval of surplus property determined by the Administrator of the Federal Aviation Administration or his duly authorized representative to be essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, or reasonably necessary to fulfill the immediate and foreseeable future requirements of the applicant for the development, improvement, operation, or maintenance of a public airport. Applications shall be prepared in accordance with § 101-44.111 and shall not require shipment of unreasonably small quantities.

§ 101-44.503 Surveillance.

FAA shall provide GSA with copies of internal instructions, and changes thereto, which outline the scope of its surveillance program for the enforcement of compliance with the terms and conditions of transfer established by GSA for surplus personal property donated to public airports.

§ 101-44.504 Reports.

In order for GSA to accumulate information as a basis for the exercise of its discretionary authority to approve the donation of surplus personal property, FAA shall make such reports on compliance actions involving donations to public airports as may be required from time to time by the Administrator of General Services.

Subpart 101-44.6—Donations to the American National Red Cross

§ 101-44.600 General.

Pursuant to section 203(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484), as amended, personal property which has been determined to be surplus property and which has been identified as having been processed, produced, or donated by the American National Red Cross shall, unless otherwise directed by the Administrator of General Services, be made available for donation to the Red Cross for charitable purposes.

§ 101-44.601 Donation approval.

The donation of surplus property for which the Red Cross is the eligible

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donee shall not require further GSA approval, unless the property has an estimated value in excess of \$500 or, in the case of blood plasma, consists of a quantity in excess of 1,000 units. In those instances in which the property to be donated exceeds the amounts stated, the GSA Regional Administrator for the area in which the property is located may approve the formal request submitted by the Red Cross.

§ 101-44.602 Cooperation of holding agencies.

Holding agencies shall cooperate with the Red Cross by informing the National Headquarters, Attention: General Supply Office, 17th and D Streets NW., Washington, DC 20006, of any surplus property in their custody which meets the criteria in § 101-44.600. By memorandum, letter, or other means of communication, the holding agencies shall provide information regarding suggested shipping facilities, quantity, description, condition, and location of such property in their inventories.

§ 101-44.603 Action by the Red Cross.

(a) Upon receipt of information from the holding agency regarding the availability of surplus personal property covered by this subpart, the Red Cross may inspect the property or request it pursuant to § 101-44.600 without inspection.

(b) The formal request and shipping instructions in duplicate shall be prepared and transmitted by the Red Cross to the holding agency activity having custody of the property within 20 calendar days from the date of notification of information provided for in § 101-44.602. Shipping instructions shall include a list of all such surplus property to be transferred and shall include reference to the date when information on which the request is based was received by the Red Cross. One copy of the request and shipping instructions shall be forwarded to the GSA regional office for the area in which the property is located.

(c) When the property to be donated exceeds the quantities stated in § 101-44.601, the Red Cross shall send three copies of the formal request and ship-

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ping instructions to the designated GSA regional office for approval. Upon approval, the GSA regional office will mail two approved copies direct to the responsible activity of the holding agency.

§ 101-44.604 Transfer by holding agency.

The holding agency shall transfer direct to the Red Cross, upon receipt of the request and shipping instructions provided for in § 101-44.603, all items of surplus property requested. One copy of the request and shipping instructions shall be enclosed with the shipment or attached to shipping documents. The shipments shall be made f.o.b. installation, transportation charges collect.

§ 101-44.605 Donable property determined unusable by the Red Cross.

Property eligible for donation to the Red Cross which because of deterioration or for other reasons the Red Cross declines in writing to request as a donation, or as to which no action is taken by the Red Cross within the 20 calendar day period prescribed in § 101-44.603, shall be disposed of as other surplus. When the Red Cross property is offered for disposal, the disposal document shall provide for a certification to the effect that all Red Cross labels or other Red Cross identifications will be obliterated or removed from the property before use by the recipient or transfer by him to other users.

Subpart 101-44.7—Donations of Property to Public Bodies

§ 101-44.700 Scope of subpart.

This subpart prescribes the policies and methods governing the disposition by executive agencies by donation to public bodies of personal property which has no commercial value or of which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. This subpart does not apply to:

(a) Surplus personal property donated for the purposes of subparts 101-44.2, 101-44.4, and 101-44.5; or

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(b) Controlled substances (as defined in § 101-42.001) and combat material (as defined in § 101-46.001-2).

[42 FR 56003, Oct. 20, 1977, as amended at 57 FR 39136, Aug. 28, 1992]

§ 101-44.701 Findings justifying donation to public bodies.

§ 101-44.701-1 General.

(a) Property shall not be donated to public bodies by an executive agency unless it is affirmatively found in writing by a duly authorized official of the agency either that:

(1) The property has no commercial value, or

(2) The estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

(b) Findings shall not be made by any official directly accountable for the property covered thereby.

§ 101-44.701-2 Reviewing authority.

When a line item of the property to be disposed of under this subpart 101-44.7 by an executive agency at any one location at any one time had an original cost (estimated if not known) of more than \$1,000, findings made under § 101-44.701-1 shall be approved by a reviewing authority before any disposal.

§ 101-44.702 Donations to public bodies.

§ 101-44.702-1 Authority to donate.

Any executive agency may donate property to public bodies in accordance with § 101-44.701-1.

§ 101-44.702-2 Disposal costs.

Any public body receiving property from an executive agency pursuant to this subpart shall pay the disposal costs incident to the donation such as packing, preparation for shipment, demilitarization, loading, and transportation to the donee.

§ 101-44.702-3 Hazardous materials.

When hazardous materials as defined in part 101-42 are donated to a public body in accordance with this subpart, the head of the agency or designee authorized to make the donation shall be responsible for the safeguards, notifications, and certifications required by

part 101-42, and compliance with all other requirements therein.

[57 FR 39136, Aug. 28, 1992]

Subpart 101-44.8 [Reserved]

Subpart 101-44.9—Miscellaneous Statutes

§ 101-44.900 Scope of subpart.

Property disposed of under the following statutes is first subject to the requirements of subparts 101-44.2, 101-44.4, and 101-44.5. Disposals under these statutes do not require the approval of the Administrator of General Services.

§ 101-44.901 Condemned or obsolete material.

Pursuant to 10 U.S.C. 2572, the Secretary of a military department or the Secretary of the Treasury (and the Secretary of Transportation with regard to the functions of the Coast Guard transferred to him under Pub. L. 89-670, approved October 15, 1966) may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to recipients specified in 10 U.S.C. 2572. However, records of the Government as defined in 44 U.S.C. 3306 shall not be disposed of under this § 101-44.901.

§ 101-44.902 Obsolete, condemned, or captured vessels.

Pursuant to 10 U.S.C. 7308, the Secretary of the Navy may transfer by gift or otherwise, on terms prescribed by him and set forth in 10 U.S.C. 7308 (b) and (c), any obsolete or condemned vessel of the Navy or any captured vessel in the possession of the Department of the Navy to recipients specified in 10 U.S.C. 7308.

§ 101-44.903 Obsolete naval material.

Pursuant to 10 U.S.C. 7541, the Secretary of the Navy may give obsolete material not needed for naval purposes and may sell other material that may be spared at a price representing its fair value to the Boy Scouts of America for the sea scouts, the Naval Sea Cadet Corps for the sea cadets, and the

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Young Marines of the Marine Corps League for the young marines. The costs of transportation and delivery of material given or sold shall be charged to the Boy Scouts of America, the Naval Sea Cadets, or the Young Marines of the Marine Corps League, as appropriate.

§ 101-44.904 Obsolete material and articles of historic interest.

Pursuant to 10 U.S.C. 7545, the Secretary of the Navy may lend or give, without expense to the United States, 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 Department of the Navy to recipients specified in 10 U.S.C. 7545. However, records of the Government as defined in 44 U.S.C. 3306 shall not be disposed of under this § 101-44.904.

§ 101-44.905 Obsolete or other Coast Guard material.

Pursuant to 14 U.S.C. 641a, the Commandant of the Coast Guard may dispose of, with or without charge, obsolete or other material not needed for the Coast Guard to recipients specified in 14 U.S.C. 641a.

**Subparts 101-44.10—101-44.46
[Reserved]**

Subpart 101-44.47—Reports

§ 101-44.4701 Reports.

(a) [Reserved]

(b) The Administrator of General Services will submit by October 21, 1987, and annually thereafter, a report to the Congress that describes each program that is administered by the agency to assist homeless individuals and the number of homeless individuals served by each program; impediments, including any statutory and regulatory restrictions, to the use of these programs by homeless individuals; and efforts made by GSA to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

(c) [Reserved]

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(d) The Administrator of General Services will submit by April 30, 1991, and biennially thereafter, a report in duplicate to the President of the U.S. Senate and to the Speaker of the U.S. House of Representatives that covers the initial period from November 5, 1988, and each succeeding biennial period and contains a full and independent evaluation of the operation of programs for the donation of Federal surplus personal property; statistical information on the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations and surplus personal property approved for donation to the State agencies for surplus property and donated to eligible non-Federal organizations during each succeeding biennial period; and such recommendations as the Administrator determines to be necessary or desirable. A copy of each report will be simultaneously furnished to the Comptroller General of the United States. The Comptroller General shall review and evaluate the report and make any comments and recommendations to the Congress thereon, as he deems necessary or desirable.

(e) Each State agency shall submit a report in duplicate to the appropriate GSA regional office by the 25th day of the month following the quarter being reported, using GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. (The Office of Management and Budget Approval Number 3090-0112 has been assigned to this form.) Section 101-44.4902-3040 illustrates the GSA form and § 101-44.4902-3040-1 provides instructions for its use.

(f) Each State agency shall make such additional reports to GSA as may be required by the Administrator to carry out his discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16117, May 5, 1988; 53 FR 47198, Nov. 22, 1988; 54 FR 38676, Sept. 20, 1989; 62 FR 34013, June 24, 1997]

Subpart 101-44.48 [Reserved]

Subpart 101-44.49—Illustrations of Forms

§ 101-44.4900 Scope of subpart.

This subpart illustrates forms prescribed or available for use in connection with subject matter covered in this part 101-44.

§ 101-44.4901 Standard forms.

(a) Standard forms are illustrated in this section to show their text, format and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the Standard form numbers.

(b) The Standard forms illustrated in this § 101-44.4901 may be obtained by Federal activities by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity. State agencies may obtain copies of these forms from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

§ 101-44.4901-123 Standard Form 123, Transfer Order Surplus Personal Property.

§ 101-44.4901-123-A Standard Form 123-A, Transfer Order Surplus Personal Property (Continuation sheet).

NOTE: The form illustrated in § 101-44.4901-123-A is filed as part of the original document.

§ 101-44.4901-123-1 Instructions for preparing and processing Standard Form 123.

(a) *Preparing Standard Form 123*—(1) *General*—(i) The Standard Form 123 must include all information specified on the form. Particular care should be taken to ensure that the transfer order indicates the surplus release date (SRD), sometimes referred to as the automatic release date (ARD); identifies property as reportable or non-reportable; shows applicable GSA, Department of Defense (DOD), and holding activity control or report numbers; indicates the holding agency document or voucher number for nonreportable property; and contains authorized signatures in ink on the original (copies of transfer orders may have stamped

signatures). All other entries must be typed or printed. All city and State addresses shown on the form should include the ZIP code. Transfer orders received without sufficient information will be returned to the applicant or held in suspense until the missing information is obtained from the appropriate source. SF 123-A (Continuation sheet) shall be used for listing any additional property.

(ii) Reportable property, nonreportable property and property located at separate locations should not be requested on the same SF 123.

(iii) Recognized abbreviations for Federal agencies or donee organizations may be used in completing SF 123; e.g., GSA (General Services Administration); FAA (Federal Aviation Administration, Department of Transportation); SA (State agency); BSA (Boy Scouts of America); and DRMS (Defense Reutilization and Marketing Service).

(2) *Adjustments and disapprovals.* Any adjustment or partial disapproval made for the property listed in block 12 shall be initialed by the representative and/or officer signing in block 13b, 13d, 14b, or 14d. When a transfer order is disapproved in its entirety, the representative or officer who disapproves the action will return the SF 123 to the applicant with an explanation of the disapproval. When a line item is disapproved, it will be crossed out, marked “disapproved,” and initialed by the representative or officer making the deletion.

(3) *Entries*—(i) *Order number(s) (block 1).* Enter the State serial number and/or transfer order and control numbers assigned by DOD, FAA, or the donees. If the continuation sheet (SF 123-A) is used, it must contain the same transfer order number(s).

(ii) *Type of Order (block 2).* Insert “X” in the appropriate square to identify the type of order.

(iii) *Surplus Release Date (block 3).* Enter the surplus release date, sometimes called the automatic release date, as follows:

(A) *DOD Property Reported to DRMS Only.* The correct date may be obtained from DRMS or the holding activity.

(B) *DOD Property Reported to GSA Through DRMS.* The correct date may

be obtained from DRMS, GSA, or the holding activity.

(C) *Executive Agency Property Reported Directly to GSA.* The correct date may be obtained from GSA or the holding agency.

(D) *Property Not Reported to DRMS or GSA.* The surplus release date is assigned by the holding agency (property disposal officer) and must be obtained therefrom. When nonreported property items with several surplus release dates are listed, each date should follow the respective line item and block 3 will not be completed.

(iv) *Set-Aside Date (block 4).* Enter the date on which nonreported property was set aside at the holding agency by an authorized donee representative, pursuant to §101-44.109. The insertion of a set-aside date will indicate to the GSA office that the property is available as surplus and that the holding agency has agreed to set the property aside pending receipt of donation approval.

(v) *Type of Property (block 5).* Insert an "X" in the appropriate square to identify the property as reportable or nonreportable to GSA. An "X" shall not be inserted to identify the property as nonreportable when any property listed is either reportable to GSA or had previously been reported on SF 120, Report of Excess Personal Property, to GSA in accordance with §101-43.311. Reportable property never loses its identity.

(vi) *Total Acquisition Cost (block 6).* Enter the sum of all the total costs shown under block 12(h) and on continuation sheets when appropriate.

(vii) *General Services Administration (block 7).* Add the street address, city, State, and ZIP code of the appropriate GSA office.

(viii) *Location of Property (block 8).* Insert the actual location of the property, including if available the warehouse or building number, street address, city, State, and ZIP code or other specific location of the property listed in block 12.

(ix) *Holding Agency (block 9).* Enter the complete name and address of the holding agency, including ZIP code; i.e., the executive agency which has accountability and administrative control over the property. It may or may

not be the same as the property location.

(x) *For GSA Use Only (block 10).* The GSA regional office will enter the appropriate codes in order to satisfy automated control reporting requirements.

(xi) *Pickup or Shipping Instructions (block 11).* Insert the name, address, including ZIP code, and telephone number of the State agency or donee representative to be notified of property availability when the property listed in block 12 is to be picked up. Enter shipping instructions when the property listed in block 12 is to be shipped. The applicant shall pay all transportation costs.

(xii) *Surplus Property List (blocks 12 (a), (b), (c), (d), (e), (f), (g), and (h))—(A) Line Item Number.* Enter in block 12(a) the identical number assigned to the line item on the document from which the control numbers indicated in block 12(b) are selected.

(B) *Identification Numbers.* Enter in block 12(b) pertinent identification numbers as follows:

(1) *GSA control number.* Military property reported to GSA through DRMS and all civilian and military agency property reported directly to GSA is assigned a GSA control number. The GSA control number may be obtained from the appropriate GSA office. In all cases in which a GSA control number is assigned, it must be entered on the SF 123.

(2) *DOD excess report number.* All excess property reported to DRMS is assigned a DOD excess report number. For such property subsequently reported to GSA, the DOD excess report number may be obtained from GSA or the DRMO/holding activity. The DOD excess report number for DOD property screened by DRMS but not reported to GSA for screening may be obtained from DRMS or the DRMO/holding activity. In all cases in which a DOD excess report number is assigned, it must be entered on the SF 123.

(3) *Holding agency control number.* The holding agency assigns a control number for all reportable property. For nonreportable property, the holding agency assigns a document or voucher number. This control number can be made available by the holding agency,

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and in the case of reported property, by GSA or DRMS (for DOD property), as appropriate.

(C) *Description.* Enter in block 12(c) the item description. Include national stock number and noun name, if available. Otherwise, furnish Federal supply class number and commercial description, when possible. This space on the form may also be used to insert additional data pertinent to the description of the property; e.g., serial numbers and packaging information.

(D) *Demilitarization Code.* For munitions list items identified as requiring demilitarization, enter in block 12(d) the one-letter demilitarization code assigned to the property. This information is available from the document on which the property was originally listed.

(E) *Condition Code.* Enter in block 12(e) the identical condition code indicated for the line item on the document from which each item of property listed in block 12(c) was selected. Condition codes are illustrated at §101-43.4901-120-1.

(F) *Quantity and Unit of Issue.* Enter in block 12(f) the exact quantity and unit of issue (each, inches, feet, pounds, tons, dozen, gross, etc.) for each line item.

(G) *Unit Acquisition Cost.* Enter in block 12(g) for each line item the acquisition cost of the unit of issue indicated in block 12(f). This information is available from the document on which the property was originally listed.

(H) *Total Acquisition Cost.* Enter in block 12(h) for each line item the total acquisition cost of the quantity of unit of issue indicated in block 12(f). Care should be taken to ensure that the multiplication of the unit acquisition cost times quantity is correct.

(xiii) *Transferee Action (blocks 13 a, b, c, d, and e)*—(A) *State agency.* Enter in block 13a the name and address, including ZIP code, of the State agency which is making the request for the property. The authorized official of the State agency shall sign and enter his or her title in block 13b, and show in block 13c the date of signature.

(B) *Service educational activity.* Enter in block 13a the name and address of the school, club, or council specifically designated by the service educational

activity (SEA). Include the ZIP code and the county in which the SEA is located. Enter in block 13b the title of the authorized donee representative (an officer of the school, club, or council authorized to request donable surplus property). The donee representative shall sign in block 13b and enter the date in block 13c. The head of the SEA (school or national headquarters) shall indicate approval by signing in block 13d and entering the date of signature in block 13e.

(C) *Public airport.* Enter in block 13a the name and address of the public airport or the authorized State aeronautical agency which is requesting the property. Include the ZIP code and the county in which the public airport or State aeronautical agency is located. The authorized official of the public airport or State aeronautical agency or its designated representative shall sign and enter his or her title in block 13b, and show in block 13c the date of signature.

(xiv) *Administrative action*—(A) *Determining Officer (DOD or FAA) (blocks 14a, b, and c)*—(1) *Department of Defense.* For donation of nonreportable surplus property to service educational activities, enter in block 14a the name and address, including ZIP code, of the property disposal officer (PDO) controlling the property. The PDO shall sign in block 14b and enter the date in block 14c. The PDO shall not authenticate SF 123 for donations for a State agency or a public airport.

(2) *Federal Aviation Administration.* Enter in block 14a the name and title of the appropriate FAA official. The official shall sign in block 14b and enter the date in block 14c.

(B) *GSA Approving Officer (blocks 14d, e, and f).* Enter in block 14d the name and title of the GSA officer approving the order. The GSA officer will sign in block 14e and enter the date in block 14f.

(b) *Processing SF 123*—(1) *Public agencies and eligible nonprofit tax-exempt activities.* (i) Upon a determination that surplus property is necessary and useful for public agencies and eligible nonprofit tax-exempt activities, the State agency shall prepare and submit an original and five copies of SF 123 to the appropriate GSA office and shall send

an informational copy to the holding agency. The State agency official shall sign in block 13b. When the location of the property is different from that of the holding agency, an additional copy may be sent to the location for informational purposes. Block 11, "Pickup or Shipping Instructions," shall be completed, as well as blocks 13b and c.

(ii) At the time the property is determined surplus and approved for transfer by GSA, the GSA office will complete the SF 123 in blocks 14d, e, and f; retain one copy for the files; return two copies to the State agency; and send the original and one copy directly to the holding agency.

(iii) The holding agency upon receipt of the SF 123 shall release the property for donation promptly in accordance with the pickup or shipping instructions.

(2) *Service educational activity*—(i) *DOD property reported to DRMS.* (A) Transfer orders for property listed in DRMS excess listings shall be initiated by a school or the national headquarters of the SEA by transmitting an original and five copies of the SF 123 to its authorized donee representative. The SF 123 shall be completed except for block 13.

(B) The authorized donee representative shall complete blocks 13a, b, and c and return the original and four copies to the national headquarters if applicable. The fifth copy shall be retained by the authorized donee representative.

(C) The head of the SEA (school or national headquarters) shall indicate approval by signing block 13d of the SF 123 and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to DRMS, retaining the fourth copy for its files.

(D) DRMS shall hold the SF 123 until it determines the property excess to the needs of DOD. When the property is determined excess, the SF 123 (the original and three copies), with a copy of the excess report, shall be sent to the appropriate GSA regional office.

(E) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete blocks 14d, e, and f; retain one copy; send the original and one copy to the holding agency; and send

an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(F) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(ii) *DOD property reported directly to GSA.* (A) Transfer orders shall be initiated by the authorized donee representative of the SEA by preparing an original and five copies of SF 123. The authorized donee representative shall complete blocks 13a, b, and c and send the original and four copies to the national headquarters if applicable. The fifth copy shall be retained by the authorized donee representative.

(B) The head of the SEA (school or national headquarters) shall indicate approval by signing block 13d of the SF 123 and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to the GSA regional office for the region in which the property is located, retaining the fourth copy for its files.

(C) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete blocks 14d, e, and f; retain one copy; send the original and one copy to the holding agency; and send an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(D) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(iii) *DOD property not reported to either DRMS or GSA.* (A) Transfer orders shall be initiated by the authorized donee representative of the SEA by preparing an original and six copies of SF 123. The authorized donee representative shall complete blocks 13a, b, and c. The original and five copies shall be sent to the property disposal officer, who shall complete blocks 14a, b, and c.

(B) The property disposal officer shall retain one copy of the SF 123 and return the original and four copies to the authorized donee representative.

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(C) The authorized donee representative shall send the original and four copies of the SF 123 to the head of the SEA for approval if applicable. The head of the SEA shall indicate approval by signing block 13d and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to the GSA regional office for the region in which the property is located, retaining the fourth copy for its files.

(D) At such time as GSA approves the transfer, the GSA office will complete the SF 123 in blocks 14d, e, and f; retain one copy, send the original and one copy to the holding agency; and send an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(E) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(3) *Public airport.* (i) The applicant shall prepare and submit an original and four copies of SF 123 to the appropriate FAA official for surplus property required for public airport purposes. The applicant shall sign in block 13b. One copy of SF 123 shall be sent to the holding agency by the applicant.

(ii) The appropriate FAA official shall indicate approval by completing blocks 14 a, b, and c; retain one copy; and send the original and three copies to the appropriate GSA office.

(iii) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete the SF 123 in blocks 14 d, e, and f; forward the original to the holding agency; return two copies to the appropriate FAA official; and retain one copy for the files.

(iv) The appropriate FAA official shall send one copy of the SF 123 to the applicant and retain one copy for the files.

(v) The holding agency, upon receipt of the approved SF 123, shall proceed to release the property for donation in accordance with the pickup or shipping instructions.

(c) *General information regarding SF 123.* (1) SF 123 is printed in a 10-part, snap-out set. Sets can be purchased by

FAA and DOD for distribution to authorized donees or applicants by ordering direct from the General Services Administration (FCNI), Washington, DC 20406. SF 123-A (Continuation sheet) can also be purchased from the same source. The continuation sheet is printed in a 10-part, snap-out set. State agencies may obtain copies of these forms from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402, or have them printed commercially. When printing these forms commercially, State agencies must ensure that the forms conform to the exact size, wording, arrangement, etc., of the approved Standard forms.

(2) SF 123 and SF 123-A sets are color coded, having two each of five different colors in each set.

(3) The SF 123 is designed for mailing in a 3 $\frac{7}{8}$ - by 8 $\frac{7}{8}$ -inch window envelope with a 1 $\frac{1}{8}$ - by 4-inch window positioned one-half inch from the bottom and three-fourths of an inch from the left side of the envelope. Slightly larger window envelopes may also be satisfactory, but the size and position of the window should not be altered. Copies should be folded along the horizontal line above block 11, and when inserted in a window envelope, the typed holding agency address will show through the window.

[53 FR 16117, May 5, 1988]

§ 101-44.4902 GSA forms.

(a) GSA forms are illustrated in this section to show their text, format, and arrangement, and provide a ready source of reference. The subsection numbers in this section correspond with the GSA form numbers.

(b) State agencies may obtain GSA Form 3040, State Agency Monthly donation Report of Surplus Personal Property, from the GSA regional office serving the geographical area in which the State agency is located.

§ 101-44.4902-3040 GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

NOTE: The form illustrated in § 101-44.4902-3040 is file as part of the original document.

§ 101-44.4902-3040-1 Instructions for preparing GSA Form 3040.

GENERAL

Each report shall be signed and dated by an approving official and submitted in duplicate to the appropriate GSA regional office by the 25th day of the month following the quarter being reported.

A. *Beginning Inventory*— List the total original Government acquisition cost for all property on hand at the beginning of the report period.

B. *Property Received*— Original Government acquisition cost for:

1. From Federal agencies—Property received and posted to inventory records during the report period from Federal agencies other than that received from sources identified under 2, 3, and 4, below.

2. From other State agencies—Property received from other State agencies via an overage or SF 123 action and posted to inventory records during the report period.

3. From Overseas—Property received through the overseas program and posted to inventory records during the report period.

4. Other receipts—Property received from all other sources and posted to inventory records during the report period, including property released by Federal agencies without documents, property returned by donees, overages not previously posted, etc. Major receipts (over \$500 per line item) should be explained in detail under "Remarks."

C. *Property Donated*— Original acquisition cost of surplus property distributed to:

1. Public agencies (as defined in §101-44.001-10)—The original Government acquisition costs for donation to public agencies during the report period shall be identified for purposes of:

- a. Conservation.
- b. Economic development.
- c. Education.
- d. Parks and recreation.
- e. Public health.
- f. Public safety.

g. Two or more (when the donee indicates on the State agency distribution document that the property will be used equally for two or more public purposes).

h. Other (when the property will be used for a public purpose other than a through f).

2. Nonprofit institutions or organizations— As indicated in §101-44.207, donations to nonprofit institutions and organizations during the report period shall be identified by (a) educational and (b) public health purposes.

D. *Other Distribution*— Original Government acquisition cost for:

1. Transfer to other State agencies—Total acquisition cost of all property transferred to other State agencies and dropped from inventory during the report period as a result of an overage or SF 123 action.

2. Return to Federal agency—Total acquisition cost of all property returned to Federal agencies as approved by GSA and dropped from inventory during the report period with the exception of that property turned in for sale.

3. Sold—Total acquisition cost of all property dropped from inventory as a result of sales during the report period whether sold by the State agency or GSA.

4. Abandoned or destroyed—Total acquisition cost of all property dropped from inventory as a result of approved and documented abandonment or destruction actions during the report period.

5. Other adjustments—Total acquisition cost of all property redonated after having been returned from a donee, lost, stolen, or destroyed; shortages and inventory adjustments not previously posted, etc., which were dropped from inventory during the report period and documented in accordance with published procedures.

E. *Ending inventory*— To be computed by adding A and B, then subtracting C and D (A+B-C-D=E). F and G are for informational purposes only and are not included in E since they are already represented in C and D.

F. *Method of Distribution*— Total acquisition cost of property distributed during the report period identified as (1) distribution from a State agency facility or (2) picked up or shipped direct from the holding agency to a donee. (The total should be the same as the total of C and D.)

G. *Distribution to Public Agencies*— Total Government acquisition cost of property donated within the State during the reporting period.

1. Distribution to State public agencies such as State police departments, State hospitals, State parks, etc.

2. Distribution to county and local public agencies, such as a county civil defense unit, municipal health unit, county roads commission, etc.

(The total should be the same as the total of part 1 of C.)

Remarks—Use this area to report on donations to programs that provide assistance to homeless individuals. Include the total amount of property donated, the number of providers that received property, and the number of individuals (estimated if not known) served by each provider. If no donations were made to providers during the report quarter, an indication to that effect should be made.

[53 FR 16119, May 5, 1988, as amended at 53 FR 47198, Nov. 22, 1988]