

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

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§ 101-42.000 Scope of part.

This part prescribes the special policies and procedures governing the utilization, donation, sale, exchange, or other disposition of hazardous materials, dangerous property, and other categories of property with special utilization and disposal requirements, located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

§ 101-42.001 Definitions of terms.

For the purposes of this part 101-42, the following terms shall have the meaning set forth below:

Acid contaminated property means property that may cause burns or toxicosis when improperly handled due to acid residues adhering to or trapped within the material.

Biologicals means hazardous materials which are of or pertain to the products and operations of applied biology, or any biochemical products, especially serums, vaccines, etc., produced from microorganisms.

Certified electronic product means any electronic product which bears the manufacturer's certification label or tag (21 CFR 1010.2) indicating that the product meets applicable radiation safety performance standards prescribed by the Food and Drug Administration under 21 CFR part 1020.

Controlled substances means:

(a) Any narcotic, depressant, stimulant, or hallucinogenic drug, or any other drug, other substance, or immediate precursor included in Schedules I, II, III, IV, or V of section 202 of the Controlled Substance Act (21 U.S.C. 812) except exempt chemical preparations and mixtures, and excluded substances listed in 21 CFR part 1308;

(b) Any other drug or substance that the Attorney General determines to be subject to control pursuant to Subchapter I of the Controlled Substance Act (21 U.S.C. 801 *et seq.*); or

(c) Any other drug or substance that by international treaty, convention, or protocol is to be controlled by the United States.

Explosive contaminated property means property that may ignite or explode when exposed to shock, flame, sparks, or other high temperature sources due to residual explosive material in joints, angles, cracks, or around bolts.

Extremely hazardous material means:

(a) Those materials which are hazardous to the extent that they generally require special handling such as licensing and training of handlers, protective clothing, and special containers and storage.

(b) Those materials which, because of their extreme flammability, toxicity, corrosivity or other perilous qualities, could constitute an immediate danger or threat to life and property and which usually have specialized uses under controlled conditions.

(c) Those materials which have been determined by the holding agency to endanger public health or safety or the environment if not rendered innocuous before release to other agencies or to the general public.

Firearms means any weapons (including flare and starter guns) which will, or are designed to, or may be readily converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapons, or any muffler or silencer for such purposes. For purposes of this Part 101-42, firearms are considered to be dangerous property.

Hazardous material means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA), the Resource Conservation and Recovery Act (RCRA), or the Toxic Substances Control Act (TSCA). Generally, hazardous materials have one or more of the following characteristics:

(a) Has a flash point below 200 F (93.3 C), closed cup, or is subject to spontaneous heating;

(b) Is subject to polymerization with the release of large amounts of energy when handled, stored, or shipped without adequate controls;

(c) In the course of normal operations, may produce fibers, dusts, gases, fumes, vapors, mists, or smokes which have one or more of the following characteristics:

(1) Causes 50 percent fatalities to test animals below 500 mg/kg of test animal weight when a single oral dose LD50 is used;

(2) Is a flammable solid or a strong oxidizing or reducing agent;

(3) Causes first degree burns to skin in a short time exposure, or is systemically toxic by skin contact;

(4) Has a permissible exposure limit (PEL) below 1000 p/m for gases and vapors, below 500 mg/mm³ for fumes, below 30 mpppcf (10 mg/m³), or 2 fibers/CM³ for dust;

(5) Causes occupational chemical dermatitis, which is any abnormality of the skin induced or aggravated by the work environment which includes but is not limited to primary irritant categories, allergic sensitizers, and photo sensitizers;

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(d) Is radioactive to the extent it requires special handling;

(e) Is a recognized carcinogen according to Occupational Safety and Health Administration regulations at 29 CFR part 1910; or

(f) Possesses special characteristics which in the opinion of the holding agency could be hazardous to health, safety, or the environment if improperly handled, stored, transported, disposed of, or otherwise improperly used.

Hazardous waste means those materials or substances, the handling and disposal of which are governed by 40 CFR part 261.

(a) In general, hazardous materials are hazardous wastes when one or both of the following is true:

(1) They have passed through the disposal cycle without having successfully been reutilized, transferred, donated, or sold, and the holding agency declares an intent to discard.

(2) They are no longer usable for their intended purpose, a valid alternate purpose, or resource recovery.

(b) In general, solid (non-hazardous) wastes, as defined at 40 CFR 261.2, become hazardous wastes when:

(1) They exhibit one or more of the characteristics of ignitability, corrosivity, reactivity, or EP toxicity; or

(2) They are predetermined hazardous wastes upon generation as listed in 40 CFR part 261, subpart D.

(c) Hazardous materials having an expired shelf life shall be reclassified as hazardous wastes if required by Federal and/or State environmental laws or regulations. Before such reclassification, the shelf life may be extended if supported by results of tests and recertification performed by authorized personnel in accordance with applicable regulations.

(d) The transportation of hazardous wastes is governed by the regulations issued by the Department of Transportation, codified in 49 CFR part 171 *et seq.*

Lead-containing paint means paint or other similar surface coating material that contains lead or lead compounds in excess of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

Noncertified electronic product means any electronic product for which there is an applicable radiation safety performance standard prescribed or hereafter prescribed by the Food and Drug Administration (FDA) under 21 CFR part 1020, and which the manufacturer has not certified as meeting such standard. The noncertification may be due to either (a) manufacture of the product before the effective date of the standard or (b) the product was exempted from the applicable standard and is so labeled.

Nuclear Regulatory Commission—controlled materials means those materials the possession, use, and transfer of which are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC) pursuant to the Energy Reorganization Act of 1974. The materials are defined as follows:

(a) *Byproduct materials* means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. (See 10 CFR part 30.)

(b) *Source material* means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material. (See 10 CFR part 40.)

(c) *Special nuclear material* means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any other materials which the NRC, pursuant to the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material. (See 10 CFR part 70.)

Reagent means any hazardous material which is used to detect or measure another substance or to convert one substance into another by means of the reactions it causes.

§ 101-42.002 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 under Subpart 105-60.3 of this title.

Subpart 101-42.1 [Reserved]

Subpart 101-42.2—Utilization of Hazardous Materials and Certain Categories of Property

§ 101-42.200 Scope of subpart.

This subpart prescribes the special policies and methods for the utilization and transfer of hazardous materials and other certain categories of property within the Government in addition to the requirements of part 101-43.

§ 101-42.201 [Reserved]

§ 101-42.202 Identification of hazardous materials.

(a) Current acquisition standards (Fed. Std. No. 313 and Fed. Std. No. 123) and the Federal Acquisition Regulation require that manufacturers identify and document potential hazards on material safety data sheets (MSDSs) as part of the acquisition process. Acquisition of MSDSs is also prescribed by the Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR part 1910 and paragraph 1-602(c) of Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, dated February 26, 1980. GSA's Federal Supply Service (4FQ) maintains an automated data base, accessible via modem and computer terminal, that contains MSDSs for all GSA-procured hazardous materials. In addition to display of the MSDS on the terminal screen, the system allows for the addition of the MSDS to the user's local data base and the transmission of the MSDS via facsimile to the user's site. Detailed instructions on how to access this system may be obtained by sending a self-addressed envelope to General Services Administration, Federal Supply Serv-

ice, Attn: MSDS Coordinator, 401 W. Peachtree St., NE, suite 3021, Atlanta, Georgia 30365.

(b) The Hazardous Materials Information System (HMIS) is a collection of MSDS information, transportation information, and disposal information that was established by the Department of Defense to assist personnel who handle, store, ship, use or dispose of hazardous materials. Each record in the data base is defined by a stock number (either national stock number or local numbers), the manufacturer's contractor and Government entity (CAGE) code, and a part number indicator which is linked to the manufacturer's part number or trade name. The data base (DoD 6050.5L) is available on microfiche and compact disc-read only memory (CD-ROM) through the Naval Computer and Telecommunication Area Master Station, Atlantic (NCTAMS LANT), Attn.: Code 911.3, Norfolk, VA 23511-5355.

(c) For items not listed or adequately described in the HMIS or on a MSDS, contact the procuring agency, the manufacturer, or your technical staff for information as to the potential hazards of the item.

(d) Some hazardous items were acquired by Federal agencies prior to implementation of the standards requiring identification of potential hazards. Identification and documentation of the hazardous nature of such items is the responsibility of the owning or holding agency. Hazardous materials are found in most Federal supply classification (FSC) classes. Section 101-42.1101 contains a table of FSC classes composed predominantly of hazardous items and a table of FSC groups and classes which contain a significant number of hazardous items. These tables are designed to assist Federal agencies in reviewing personal property inventories to identify hazardous materials.

(e) When an item has been determined hazardous, the owning Federal agency shall document the accountable inventory record accordingly. If the item has not been appropriately labeled by the manufacturer or distributor, the owning agency shall appropriately label, mark, or tag the

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item in accordance with OSHA requirements (29 CFR 1910.1200) regarding the actual or potential hazard associated with the handling, storage, or use of the item to include hazardous chemical(s) contained and the name of the chemical manufacturer, importer, or responsible party as defined at 29 CFR 1910.1200(c). Such information shall be maintained in the item record for use in preparation of reports of excess property, reassignment or transfer documentation, and other documentation requirements that may arise.

§ 101-42.203 Reassignment of hazardous materials.

When hazardous materials are reassigned within an executive agency, information on the actual or potential hazard shall be included in the documentation effecting the reassignment, and the recipient organization shall perpetuate in the inventory or control records visibility of the nature of the actual or potential hazard.

§ 101-42.204 Reporting requirements.

(a) Except as set forth in this 101-42.204, excess personal property which has been identified as hazardous shall be reported promptly in accordance with this part and §101-43.4801, with a complete description of the actual or potential hazard associated with the handling, storage, or use of the item.

(b) If the hazardous characteristics of the item are adequately described on a MSDS or HMIS record (or equivalent), the reporting document should so indicate, and a copy of the MSDS or HMIS record shall be included. If no MSDS or HMIS is available, information must be obtained by the reporting activity and furnished with the reporting document. A certification by a duly authorized agency official that the item has been clearly labeled as prescribed in §101-42.202(e) should be included in the description of the hazard. The agency official must also certify that the containers and/or packaging meet or exceed Department of Transportation specifications for a hazardous material container (49 CFR parts 178-180).

(c) Hazardous wastes shall not be reported to GSA for disposal, and shall be disposed of by the holding agency or the reporting activity only under the

Environmental Protection Agency (EPA) and State and local regulations. Holding agencies shall contact the manufacturer, the agency's technical staff, or the local State EPA office for assistance in this matter if needed.

§ 101-42.205 Exceptions to reporting.

(a) When the actual or potential hazard is such that an item is determined by the holding agency to be extremely hazardous property, the item shall not be reported on Standard Form (SF) 120, Report of Excess Personal Property, unless so directed by a GSA regional office or GSA Central Office. Other items identified as hazardous shall be reported to GSA on SF 120 unless otherwise excepted by §§101-43.304 and 101-43.305.

(b) When an item determined to be extremely hazardous property becomes excess, the holding agency shall notify the appropriate GSA regional personal property office, identify the item, and describe the actual or potential hazard associated with the handling, storage, or use of the item. On a case-by-case basis, the GSA regional office will determine the utilization, donation, sales, or other disposal requirements, and provide appropriate guidance to the holding agency.

(c) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item is not required to be reported.

§ 101-42.206 Special requirements for utilization of hazardous materials and certain categories of property.

Special utilization requirements for certain categories of property are provided in §101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the holding agency to properly store hazardous materials and ensure the use of appropriate safeguards such as warning signs, labels, and use of protective clothing and equipment by utilization screeners who are inspecting excess hazardous materials.

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§ 101-42.207 Transfer of hazardous materials and certain categories of property.

(a) Excess hazardous materials may be transferred among Federal agencies under §101-43.309-5, except that the Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, shall contain a complete description of the actual or potential hazard associated with the handling, storage, or use of the item. Such description shall consist either of a written narrative, complying with the requirements of 29 CFR 1910.1200, in block 13c or as an addendum, or an MSDS or HMIS data. In the absence of an MSDS, the HMIS data which fulfills the MSDS requirements must be attached if the receiving activity does not have the HMIS readily available. Otherwise, citation to the HMIS shall be provided. A certification by a duly authorized official that the item has been clearly labeled and its packaging meets OSHA and DOT requirements as set forth in §§101-42.202(e) and 101-42.204 respectively, shall be included in the description of the hazard. The transferee shall prepare the SF 122, or any other transfer order form approved by GSA, under §101-43.4901-122.

(b) The transferee agency shall document the inventory or control record of the transferred hazardous item to clearly reflect the actual or potential hazard associated with the handling, storage, or use of the item. If available, an MSDS or a citation or copy of the HMIS data must be filed with the SF 122 or automated requisitions on approved forms. Such visibility shall be maintained in the item record and on the property (labeled) to the extent required by Federal regulations to ensure the continued identification of the item as hazardous material.

§ 101-42.208 Custody of hazardous materials.

Custody of extremely hazardous materials shall be the responsibility of the owning or holding Federal agency. Custody of other hazardous materials may be transferred in whole or in part to another Federal agency with that agency's consent.

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§ 101-42.209 Cost of care and handling of hazardous materials and certain categories of property.

The special handling requirements associated with many hazardous materials often increase the cost of care and handling of hazardous materials well above the usual costs incurred while holding excess personal property pending disposition. As provided in §101-43.310-1, each holding agency shall be responsible for, and bear the cost of, care and handling of excess property pending disposition, including those special costs associated with hazardous materials. Only the cost of transportation and handling incurred incident to the transfer of hazardous materials are borne by the transferee agency if billed by the holding agency in accordance with §101-43.309-3.

Subpart 101-42.3—Donation of Hazardous Materials and Certain Categories of Property

§ 101-42.300 Scope of subpart.

This subpart prescribes the special policies and methods governing the donation of hazardous materials and certain categories of property in addition to the requirements of part 101-44.

§ 101-42.301 General.

Surplus personal property identified as hazardous material not required for transfer as excess personal property to Federal agencies shall normally be made available for donation. However, State agencies shall not acquire hazardous materials without first ensuring that there are eligible known donees for such property. Surplus property identified as hazardous may be donated provided the donee:

(a) Is informed, via MSDS, HMIS data, or written narrative, that the item is hazardous and is furnished special handling and/or other appropriate information; and

(b) Signs the following certification:

I (We) hereby certify that the donee has knowledge and understanding of the hazardous nature of the property hereby donated and will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, and disposal of the hazardous material(s). The donee agrees

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and certifies that the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the hazardous material(s) or its final disposition. Additionally, the donee agrees and certifies 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 donation of the hazardous material(s), its use, or final disposition.

§ 101-42.302 Responsibilities for donation of hazardous materials.

(a) *Holding agencies.* Holding agencies shall be responsible for the identification and reporting of hazardous materials as set forth in §§ 101-42.202 and 101-42.203. Pending transfer for donation, each holding agency shall be responsible for performing, and shall bear the cost of, care and handling of its hazardous materials.

(b) *State agencies.* State agencies or the donee when applicable, shall prepare Standard Form (SF) 123, Transfer Order Surplus Personal Property, under § 101-44.4901-123-1. A full description of the actual or potential hazard associated with handling, storage, or use of the item must be made available by providing an MSDS, HMIS data, or a narrative description in block 12c or included as an addendum to the SF 123. Such description shall comply with the requirements of 29 CFR 1910.1200. The State agency and/or donee shall sign the certification in § 101-42.301(b). Any applicable requirements and restrictions shall be forwarded with the SF 123 to the GSA regional office.

(c) *General Services Administration.* GSA, through its regional offices, shall be responsible for approving the transfer for donation of hazardous materials. Before approving any donation of a hazardous material, the GSA regional office shall make sure all required certifications and agreements accompany the SF 123.

§ 101-42.303 Hazardous materials distributed to donees by State agencies.

Donation of surplus personal property designated as hazardous material shall be accomplished by the use of State agency distribution document as set forth in § 101-44.208. In addition to

the terms, conditions, and restrictions in the distribution document, the donee shall certify to the conditions in § 101-42.301(b).

§ 101-42.304 Special requirements for donation of certain hazardous materials.

Special donation requirements for specific hazardous materials are provided in § 101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the Federal holding agency or State agency to properly store hazardous materials, ensure the use of appropriate safeguards, and provide instructions for personal protection to donation screeners who are inspecting surplus hazardous materials. It is the responsibility of the State agency and/or donee to comply with DOT regulations (49 CFR part 171 *et seq.*) when transporting hazardous materials. Any costs incident to repacking or recontainerization will be borne by the State agency and/or donee. State agencies and/or donees will comply with EPA's Resource Conservation and Recovery Act (40 CFR part 261 *et seq.*) including its application to transporters, storers, users, and permitting of hazardous wastes. Such requirements may be administered by various States instead of the EPA.

Subpart 101-42.4—Sale, Abandonment, or Destruction of Surplus Hazardous Materials and Certain Categories of Property

§ 101-42.400 Scope of subpart.

This subpart prescribes the special policies and procedures governing the sale, abandonment, or destruction of hazardous materials and certain categories of property in addition to the requirements of part 101-45.

§ 101-42.401 Sales responsibilities for hazardous materials.

(a) *General Services Administration.* GSA, through its regional offices, shall be responsible for the sale of hazardous materials for holding agencies except for the Department of Defense, which is delegated authority to sell property under its control, and agencies granted approval by GSA. Holding agency sales

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of hazardous materials conducted in accordance with §101-45.304 must meet or exceed the requirements in §101-42.403.

(b) *Holding agencies.* Holding agencies shall be responsible for preparation of hazardous materials for sale as provided for in §101-45.103-2. Pending disposal, each holding agency shall be responsible for performing and bearing the cost of care and handling of its hazardous materials, including posting appropriate warning signs and rendering extremely hazardous property innocuous, or providing adequate safeguards.

§ 101-42.402 Reporting hazardous materials for sale.

Holding agencies shall report hazardous materials to be sold by GSA to the appropriate GSA regional office for the region in which the property is physically located in the manner outlined below:

(a) *Reportable property.* Hazardous materials are required to be reported to the GSA regional offices for utilization screening as set forth in subparts 101-42.2 through 101-42.4 and 101-42.11. If the hazardous materials are not transferred or donated, the hazardous materials will be programmed for sale by the GSA regional office without further documentation from the holding agency.

(b) *Nonreportable property.* Under §101-42.202, Federal holding agencies are required to identify and label hazardous materials. Hazardous materials not required to be reported for utilization screening, and for which any required donation screening has been completed, shall be reported to the appropriate GSA regional office on Standard Form (SF) 126, Report of Personal Property for Sale, as provided in §101-45.303.

(c) *Description and certification.* The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in §§101-42.202(e) and 101-42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such de-

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scription shall be furnished by providing:

- (1) An MSDS or copy thereof; or
- (2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or
- (3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

§ 101-42.403 Sales methods and procedures.

Hazardous materials are sold in accordance with the provisions of §101-45.304 and the following special methods and procedures.

(a) Sales which offer hazardous materials shall be conducted separately from other sales. Sale catalogs or listings which offer hazardous materials shall not be mailed to all persons on the general sales mailing list but shall be sent to only those persons and entities which have expressed an interest in purchasing such materials.

(b) Sale catalogs, listings, and invitations for bids, with respect to hazardous materials, shall:

- (1) Limit the materials in each lot for sale to a single Federal supply group;
- (2) Indicate, in the item description, if an MSDS has been issued for the property being sold; and
- (3) Indicate, in the item description, if an item is being sold only for its material content.

(c) For a bid to be considered for award, the bidder must sign the following certification:

The bidder hereby certifies that if awarded a contract under this invitation for bids, the bidder will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, or other use of the material hereby purchased. The bidder will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or other claims of any nature arising from or incident to the handling, use, storage, shipment, resale, export, or other disposition of the hazardous items purchased.

(d) MSDSs, printed HMIS records, where applicable, or a written description in compliance with the requirements of 29 CFR 1910.1200 shall be sent

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to purchasers of hazardous materials with their notice of award.

(e) Unless authorized by the appropriate GSA regional office, a holding agency shall not sell extremely hazardous property unless the property is rendered innocuous or adequate safeguards are provided. Such property shall be rendered innocuous in a manner so as to preserve the utility or commercial value of the property.

§ 101-42.404 Special requirements for the sale of hazardous materials.

Special sales requirements for certain hazardous materials are provided in § 101.42.1102. Hazardous items generally require special storage and handling. It is the responsibility of the holding agency to properly store hazardous items, to provide all necessary information to ensure that prospective bidders are informed of hazards, and to list the precautions bidders should take to protect themselves.

§ 101-42.405 Transportation of hazardous materials.

The transportation of hazardous materials is governed by the hazardous materials regulations (49 CFR parts 170-180) issued by the Department of Transportation. Except as otherwise provided below, an agency official, prior to the transportation of hazardous materials, shall certify on the shipping document, based on his/her own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the hazardous materials regulations. The shipper shall provide such certification in duplicate and give one copy to the originating carrier and retain the other for no less than 1 year. Hazardous materials sold by the Department of Defense (DOD) in packings not marked under the hazardous materials regulations may be shipped from DOD installations, provided DOD certifies in writing on a certificate or equivalency (COE) that the packing meets or exceeds requirements of the hazardous materials regulations.

§ 101-42.406 Abandonment or destruction of surplus hazardous materials and certain categories of property.

In addition to the requirements for the abandonment or destruction of surplus property prescribed in subpart 101-45.9, hazardous materials, including empty hazardous material containers, shall be abandoned or destroyed under Federal, State, and local waste disposal and air and water pollution control standards. Additional requirements for the abandonment and destruction of certain specific hazardous materials are contained in § 101-42.1102.

Subparts 101-42.5—101-42.10 [Reserved]

Subpart 101-42.11—Special Types of Hazardous Materials and Certain Categories of Property

§ 101-42.1100 Scope of subpart.

This subpart prescribes disposal procedures for certain hazardous items and lists specific Federal supply classes which may contain hazardous items.

§ 101-42.1101 Federal supply classification (FSC) groups and classes which contain hazardous materials.

(a) Hazardous material identification is required for all material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life, property, and the environment, and which is therefore defined as a hazardous material.

(b) The tables in paragraph (c) of this section list those FSC classes composed predominantly of hazardous materials and those FSC classes which contain a significant number of hazardous materials. Those classes that contain munitions list items (MLI) which require demilitarization are not identified in the tables because the items in those classes must be identified by the appropriate demilitarization code and processed under the procedures in § 101-42.1102-8.

(c) The tables as listed in Federal standard 313 are as follows:

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FEDERAL SUPPLY CLASSES COMPOSED
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Federal Supply Class (FSC)

- 6810 Chemicals
- 6820 Dyes
- 6830 Gases: Compressed and liquified
- 6840 Pest control agents and disinfectants
- 6850 Miscellaneous chemical specialties
- 7930 Cleaning and polishing compounds and preparations
- 8010 Paints, dopes, varnishes, and related products
- 8030 Preservative and sealing compounds
- 8040 Adhesives
- 9110 Fuels, solid

- 9130 Liquid propellants and fuels, petroleum case
- 9135 Liquid propellant fuels and oxidizers, chemical base
- 9140 Fuel oils
- 9150 Oils and greases: Cutting, lubricating, and hydraulic
- 9160 Miscellaneous waxes, oils, and fats

FEDERAL SUPPLY CLASSES AND GROUPS WHICH
CONTAIN A SIGNIFICANT NUMBER OF HAZARDOUS ITEMS

NOTE: If an item is determined to be hazardous as defined in §101-42.001, a material safety data sheet (or equivalent) should accompany the item even though the Federal supply class is not listed in this table.

Federal supply class/grp	Title	Examples of hazardous materials requiring identification
1370	Pyrotechnics	Warning fuse, fire starter.
1375	Demolition materials	Explosive device.
2520	Vehicular power transmission components ...	Items containing asbestos.
2530	Vehicular brake steering, axle, wheel, and track components.	Items containing asbestos.
2540	Vehicular furniture and accessories	Items containing asbestos.
2640	Tire rebuilding and tire and tube repair materials.	Items containing flammable or toxic compounds.
Group 28 ..	Engines, turbines, and components	Engine valves containing metallic sodium.
Group 29 ..	Engine accessories	Engine valves containing metallic sodium.
Group 30 ..	Mechanical power transmission equipment ...	Equipment containing hazardous hydraulic fluids including PCBs.
Group 34 ..	Metalworking machinery	Equipment containing hazardous hydraulic fluids including PCBs.
3433	Gas welding, heat cutting, and metalizing equipment.	Compressed gases.
3439	Miscellaneous welding, soldering and brazing supplies and accessories.	Hazardous items such as cleaners, acids, flux and supplies that contain or produce hazardous fumes.
3610	Printing, duplicating, and bookbinding equipment.	Flammable or toxic lithographic solutions.
3655	Gas generating and dispensing systems, fixed or mobile.	Items that produce hazardous fumes.
3680	Foundry machinery, related equipment and supplies.	Flammable or toxic casting compounds.
4240	Safety and rescue equipment	Items which involve oxygen, or compressed gases, or contain emitting charges.
5610	Mineral construction materials, bulk	Hazardous items such as cutback asphalt, deck and floor covering, deck and surface underlay compound, sealing compound, flight deck compound.
5660	Wallboard, building paper, and thermal insulation materials.	Asbestos cloth which has loose fibers or particles that may become airborne and materials containing formaldehyde.
5820	Radio and television communication equipment, except airborne.	Circuit cooler items that contain gases that are regarded as hazardous to the earth's ozone layer.
5835	Sound recording and reproducing equipment	Recording tape cleaners that contain hazardous cleaning fluids.
5910	Capacitors	Items that contain polychlorinated biphenyls (PCBs) or sulfuric acid.
5915	Filters and networks	Items that contain polychlorinated biphenyls (PCBs).
5920	Fuses and lightning arresters	Items that contain radioactive material.
5925	Circuit breakers	Items that contain radioactive material.
5930	Switches	Items containing radioactive materials.
5935	Connectors, electrical	Kits that contain flammable chemicals.
5950	Coils and transformers	Items containing polychlorinated biphenyls (PCBs).
5960	Electron tubes and associated hardware	Tubes which contain radioactive isotopes and require warning labels and megnetron tubes which require special precautions when being prepared for air shipment.
5965	Headsets, handsets, microphones, and speakers.	Items containing magnetic material.
5970	Electrical insulators and insulating materials	Items containing flammable solvents.
5975	Electrical hardware and supplies	Items containing asbestos.
5985	Antennas, waveguide, and related equipment	Kits that contain flammable chemicals.
5999	Miscellaneous electrical and oxide electronic components.	Contact plates that contain beryllium.
Group 61 ..	Electric wire and power and distribution equipment.	Power factor capacitors containing PCBs.
6120	Transformers: Distribution and power station	Transformers containing PCBs.

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Federal supply class/grp	Title	Examples of hazardous materials requiring identification
6135	Batteries, primary	Lead-acid, lithium and mercury batteries and alkaline (with electrolyte).
6140	Batteries, secondary	Items that are wet or moist containing corrosive or other hazardous compounds.
6145	Wire and cable, electrical	Insulated wire containing asbestos.
6220	Electric vehicular lights and fixtures	Items that contain mercury.
6230	Electric portable and hand lighting equipment	Items that contain wet batteries.
6240	Electric lamps	Items that contain mercury.
6260	Nonelectrical lighting fixtures	Items that contain mercury.
6350	Miscellaneous signal and security detection systems	Items that contain wet batteries or radioactive material.
6505	Drugs, biologicals and official reagents	Hazardous items as defined in §101-42.001.
6508	Medicated cosmetics and toiletries	Hazardous items as defined in § 101-42.001 subject to DOT Hazardous Materials Regulations.
6510	Surgical dressing materials	Items containing flammable solvents.
6520	Dental instruments, equipment, and supplies	Items containing flammable solvents, mercury, or asbestos.
6525	X-ray equipment and supplies: medical, dental, veterinary	Items containing hazardous chemicals, solvents.
6625	Electrical and electronic properties measuring and testing instruments	Items containing radioactive materials.
6640	Laboratory equipment and supplies	Items containing flammable compounds, mercury, or asbestos.
6685	Pressure, temperature, and humidity and measuring and controlling instruments	Items containing mercury or compressed gases.
6740	Photographic	Items containing radioactive compounds.
6750	Photographic supplies	Items containing hazardous chemicals, solvents, thinners, and cements.
6780	Photographic sets, kits and outfits	Items containing hazardous chemicals, solvents, thinners, and cements.
7360	Sets, kits, and outfits; food preparation and serving	Items containing compressed gases such as fire extinguishers.
7510	Office supplies	Hazardous items, such as thinners, cleaning fluids, flammable inks, and varnishes.
8405	Outerwear, men's	Maintenance kits containing flammable solvents.
8410	Outerwear, women's	Maintenance kits containing flammable solvents.
8415	Clothing, special purpose	Maintenance kits containing flammable solvents.
8465	Individual equipment	Maintenance kits containing flammable solvents.
8510	Perfumes, toilet preparations, and powders	Shipping containers, and pressurized containers with flammable or nonflammable propellants.
8520	Toilet soap, shaving preparations, and dentifrices	Shipping containers, pressurized containers with flammable or nonflammable propellants.
8720	Fertilizers	Items containing weed and pest control or other harmful ingredients or because of their composition, are hazardous.
9390	Miscellaneous fabricated nonmetallic materials	Items containing flammable solvents or asbestos.
9920	Smokers' articles and matches	Lighter fuel and matches only.
9930	Memorials; cemetery and mortuary equipment and supplies	Items containing formaldehyde or its solutions.

§ 101-42.1102 Special requirements for utilization, donation, sale, and abandonment or destruction of hazardous materials and certain categories of property.

§ 101-42.1102-1 Asbestos.

(a) *General.* (1) Asbestos is the common name for a group of natural minerals that occur as masses of compact or relatively long silky fibers. The Environmental Protection Agency classified asbestos as a hazardous air pollutant in 1972.

(2) Friable asbestos materials contain more than one percent asbestos by weight and can, by hand pressure, be

crumbled, pulverized, or reduced to powder, thus allowing for potential release of asbestos fibers into the air.

(3) Nonfriable asbestos materials cannot, when dry, be crumbled, pulverized, or reduced to powder by hand pressure and contain asbestos which is bonded or otherwise rendered unavailable for release into the atmosphere through normal usage. However, cutting, sanding, crushing, or performing some other disruptive action on items containing nonfriable asbestos can release asbestos fibers into the air.

(4) As noted in this §101-42.1102-1, property containing friable asbestos

normally shall not be transferred, donated, or sold. Notwithstanding these provisions, holding agencies may, on a case-by-case basis, request approval from the GSA Central Office (which will consult with EPA) to transfer, donate, or sell such property if, in the judgement of the holding agency, special circumstances warrant such action.

(b) *Utilization requirements.* (1) Excess personal property known to contain friable asbestos shall not be reported to GSA nor transferred among Federal agencies except as noted in §101-42.205(c) or paragraph (a)(4) of this section. GSA regional offices shall return any reports of excess property containing friable asbestos to the holding agency with instructions to dispose of the property under paragraph (e) of this section.

(2) Excess personal property containing nonfriable asbestos shall be reported and processed in the normal manner, as provided for in part 101-43, except that:

(i) The Standard Form (SF) 120, Report of Excess Personal Property, and SF 122, Transfer Order, Excess Personal Property, and any other appropriate documentation shall include the following warning:

WARNING

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property. End users and new owners, if transferred, should be warned. OSHA standards for personnel protection are codified at 29 CFR 1910.1001. EPA disposal standards are codified at 40 CFR part 763.

(ii) Immediately after excess determination, all items of personal property known to contain nonfriable asbestos shall be labeled with a warning substantially as follows:

WARNING

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property.

(c) *Donation requirements.* (1) Surplus personal property containing friable asbestos shall not be donated. Such

property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be donated in the normal manner as provided for in part 101-44, except that:

(i) The Standard Form (SF) 123, Transfer Order Surplus Personal Property, and any other appropriate documentation shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be donated which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(d) *Sales requirements.* (1) Surplus personal property containing friable asbestos shall not be sold. Such property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be sold as provided for in part 101-45, except that:

(i) Any documentation which lists the property to be sold and which is prepared incident to the sale, and any printed matter which advertises the sale of personal property containing nonfriable asbestos shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be sold which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(e) *Abandonment and destruction.* (1) Excess or surplus personal property which contains friable asbestos shall be disposed of by burial in a site which meets the requirements of 40 CFR 61.156. Holding agencies should contact the nearest office of the Environmental Protection Agency for assistance with regard to disposal of asbestos containing materials (with the exception of Department of Defense activities which should contact the Defense Logistics Agency).

(2) Personal property containing nonfriable asbestos which is not transferred, donated, or sold shall be abandoned or destroyed as provided for in subpart 101-45.9. However, if the holding agency judges that the nonfriable asbestos contained in the property has the potential of becoming friable for

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any reason during the process of abandonment or destruction, such property shall be disposed of as provided in paragraph (e)(1) of this section.

§ 101-42.1102-2 Polychlorinated biphenyls.

(a) *General.* (1) Polychlorinated biphenyls (PCBs) are one member of a class of chlorinated aromatic compounds which have been determined to be hazardous to health and the environment. They are used, among other things, as insulators and coolants for electric cables and components such as transformers and capacitors, as additives for extreme pressure lubricants, and as coatings in foundry use.

(2) Substances containing PCBs are divided into three classes according to the concentration of PCBs present, as measured by parts per million (ppm).

(i) Zero through 49 ppm is classified as an *excluded PCB product*.

(ii) Fifty through 499 ppm PCB is classified as *PCB item*.

(iii) Five hundred or greater ppm PCB is classified as *PCB*.

(3) Excluded PCB products (0-49 ppm PCB) are not subject to Federal restrictions and may be transferred, donated, sold, or otherwise processed under parts 101-43 through 101-46 of this chapter provided such processing conforms to the provisions of this section and all applicable State and local laws. Some States regulate PCB concentrations at a stricter level than does the Federal Government.

(4) All PCBs and PCB items to be transferred, donated, or sold shall be labeled or marked conspicuously with a warning substantially as follows:

Caution—This item contains PCBs (polychlorinated biphenyls), a toxic environmental contaminant requiring special handling and disposal in accordance with the U.S. Environmental Protection Agency regulation (40 CFR 761), applicable State laws, and 41 CFR 101-42.1102-2. For proper disposal information, contact the nearest EPA office. For transportation requirements, see 49 CFR Parts 171-180.

(5) Unmarked or unlabeled items containing PCBs or PCB items with an unknown level of concentration of PCBs shall not be transferred, donated, or sold.

(b) *Utilization requirements.* (1) PCBs and PCB items are reported for utilization screening in accordance with § 101-42.204.

(2) Transfers of excess PCBs or PCB items shall not be approved by GSA unless:

(i) The items are intact, non-leaking, and totally enclosed.

(ii) The SF 122, Transfer Order Excess Personal Property, or other transfer document cites the specific provision in 40 CFR Part 761 that permits continued use of the item, and contains a certification that the property has been inspected by the transferee and complies with all the use, inspection, labeling, and other provisions of 40 CFR part 761.

(3) When a PCB or PCB item is transferred as excess to another agency, the receiving agency shall annotate its property accountability records to reflect the nature and extent of the PCB content and shall list the provisions of 40 CFR part 761 authorizing use of the item. If tests are conducted to ascertain the nature and extent of PCB contamination, the receiving agency shall furnish the GSA regional office with a copy of the test results. Such information shall be perpetuated on any notification or release documents when the agency disposes of the property.

(c) *Donation requirements.* (1) No PCB or PCB-contaminated items shall be approved by GSA for donation under part 101-44 unless:

(i) The certification required by § 101-42.1102(a)(4) appears on the SF 123, Transfer Order Surplus Personal Property;

(ii) The specific donee has been determined; and

(iii) A justification from the recipient is attached stating the proposed use of the property and citing the specific provision in 40 CFR part 761 that permits continued use of the item.

(2) All PCBs and PCB items must be in usable condition and in working order to be eligible for donation. Such items that are not in usable condition will not be approved for donation.

(3) Items to be donated must be intact, totally enclosed, and non-leaking.

(4) If PCBs or PCB items are donated to service educational activities or to

public airports, the Department of Defense or the Federal Aviation Administration, respectively, shall obtain the following signed warning and certification from the donee. State agencies for surplus property shall have the warning and certification typed or stamped on the face of each copy of the distribution document and signed and dated by the authorized representative of the donee organization at the time the property is issued.

Warning and certification:

The donee is aware that the item(s) listed as containing polychlorinated biphenyls (PCBs), a toxic environmental contaminant, require(s) special handling and disposal in accordance with U.S. Environmental Protection Agency regulation (40 CFR part 761) and U.S. Department of Transportation regulations codified in 49 CFR parts 171-180. The donee certifies that this item will be handled and disposed of in accordance with applicable Federal statutes and regulations and applicable State laws.

(d) *Sales requirements.* (1) Surplus PCBs or PCB items normally shall not be sold by GSA or holding agencies. These items are regarded as extremely hazardous and are to be disposed of by the holding agency under the Environmental Protection Agency regulations.

(2) Agencies may request the authority to sell, or that GSA sell, a specific PCB or PCB item. Such requests shall cite the provision in 40 CFR part 761 that authorizes sale and continued use of the specific item. Any such requests shall also include a justification for sale of the item rather than disposal under the EPA regulations.

(3) If PCBs or PCB items are to be sold, the corresponding invitation for bids (IFB), any Standard Form (SF) which lists such items, and any printed matter which advertises the sale of such items shall contain the warning as provided in paragraph (a)(4) of this section.

(e) *Abandonment and destruction.* (1) PCBs and PCB items of personal property not disposed of via utilization, donation, or sale shall be destroyed or otherwise disposed of in accordance with the Environmental Protection Agency regulation (40 CFR part 761) and applicable State laws.

(2) Holding agencies shall contact the nearest office of the EPA for assistance

in complying with the provisions of 40 CFR part 761.

§ 101-42.1102-3 Controlled substances.

(a) *Utilization requirements.* (1) Excess controlled substances are not required to be reported to GSA, but are subject to the utilization screening requirements of § 101-43.311-2. Holding agencies shall make reasonable efforts to obtain utilization of excess controlled substances by offering them to those Federal agencies which certify that they are registered with the Drug Enforcement Administration (DEA), Department of Justice, and are authorized to procure the particular controlled substances requested for transfer. The certification shall include the registration number on the DEA Form 223, Certificate of Registration, issued by DEA.

(2) Holding agencies shall arrange for transfers of controlled substances under §§ 101-43.309-5 and 101-42.207.

(3) All controlled substances that a holding agency determines to be excess shall become surplus after the holding agency has complied with the utilization requirements of paragraph (a)(1) of this section.

(b) *Donation requirements.* Controlled substances shall not be donated.

(c) *Sales requirements.* Surplus controlled substances which are not required to be destroyed as provided in paragraph (d) of this section may be offered for sale by sealed bid under subpart 101-45.3 provided:

(1) The invitation for bids (IFB):

(i) Consists only of surplus controlled substances;

(ii) Requires the normal bid deposit prescribed in § 101-45.304-10;

(iii) Is distributed only to bidders who are registered with the DEA, Department of Justice, to manufacture, distribute, or dispense the controlled substances for which the bid is being submitted; and

(iv) Contains the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certificate as contained in this invitation. No award will be made or sale consummated until after this agency has obtained from the Drug Enforcement Administration, Department of Justice, verification that the bidder is registered to manufacture, distribute, or dispense those

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controlled substances which are the subject of the award.

(2) The following certification shall be made a part of the IFB (and contract) to be completed and signed by the bidder and returned with the bid:

The bidder certifies that he/she is registered with the Drug Enforcement Administration, Department of Justice, as a manufacturer, distributor, or dispenser of the controlled substances for which a bid is submitted and that the registration number is _____.

Name of bidder (print or type)

Signature of bidder

Address of bidder (print or type)

City, State, Zip code

(3) As a condition precedent to making an award for surplus controlled substances, the following shall be submitted to the Drug Enforcement Administration (DEA), Department of Justice, Washington, DC 20537, Attn: Regulatory Support Section (ODR):

(i) The name and address of the bidder(s) to whom an award is proposed to be made and the bidder(s) registration number(s);

(ii) The name and address of both the holding activity and the selling activity;

(iii) A description of the controlled substances, how those substances are packaged, and the quantity of substances proposed to be sold to the bidder;

(iv) The identification of the IFB by its number, and date on which such bid(s) expire(s); and

(v) A request for advice as to whether the bidder is a registered manufacturer, distributor, or dispenser of controlled substances.

(d) *Destruction of controlled substances.* Controlled substances shall not be abandoned, and destruction of controlled substances must be accomplished in accordance with the terms and conditions applicable to drugs, biologicals, and reagents under §101-42.1102-5(d).

(1) The following shall be destroyed by the holding agency or State agency:

(i) Controlled substances determined surplus at one time and one place with an acquisition cost of less than \$500;

(ii) Controlled substances in a deteriorated condition or otherwise unusable;

(iii) Controlled substances for sale in accordance with §101-42.1102-3(c) but for which no satisfactory or acceptable bids were received.

(2) In addition to the requirements set forth herein, each executive agency and State agency shall comply with the DEA regulations, 21 CFR 1307.21, which provide procedures for disposing of controlled substances, or with equivalent procedures approved by DEA.

(3) Destruction of controlled substances shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction unless the special agent in charge (SAC) of the DEA Divisional Office directs otherwise.

§ 101-42.1102-4 Nuclear Regulatory Commission-controlled materials.

(a) *General.* The Nuclear Regulatory Commission (NRC) has exclusive control over licensing, use, transfer, and disposition of NRC-controlled materials.

(b) *Transfer of NRC-controlled materials.* NRC-controlled materials shall not be reported to GSA as excess personal property, nor shall they be made available for excess and surplus screening as nonreportable property. Transfer and disposition of such materials do not require GSA approval and shall be accomplished only under the applicable regulations of the NRC (see 10 CFR parts 30 through 35, 40, and 70).

(c) *Information and inquiries.* All inquiries for further information or specific instructions regarding the licensing, use, transfer, or disposition of NRC-controlled materials shall be directed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 101-42.1102-5 Drugs, biologicals, and reagents other than controlled substances.

In addition to the requirements of subparts 101-42.2 through 101-42.4, drugs, biologicals, and reagents which are fit for human use shall be reported as provided in this §101-42.1102-5. Drugs, biologicals, and reagents that

are controlled substances are subject to the provisions of §101-42.1102-3.

(a) *Utilization requirements.* Excess drugs, biologicals, and reagents shall be reported or otherwise made available to GSA as provided in §101-42.204 and subpart 101-43.3. Drugs, biologicals, and reagents other than controlled substances may be separately packaged or may be components of a drug kit. Drug kits shall be clearly labeled to identify components unfit for human use. The holding agency shall destroy, as provided in paragraph (d) of this section, both separately packaged items and kit components which have been determined by the holding agency to be unfit for human use. However, items determined unfit because of expired shelf life may be transferred for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(b) *Donation requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) of this section may be donated to eligible organizations as provided in subpart 101-42.3 and part 101-44. Drugs, biologicals, and reagents which are unfit for human use will not be offered for donation. However, items determined unfit because of expired shelf life may be donated for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(1) When surplus drugs, biologicals, and reagents are considered for donation, a letter of clearance shall be obtained by the State agency or designated donee from the Food and Drug Administration (FDA) indicating that the items requested may be safely donated. The letter of clearance must accompany the SF 123. Items which do not fall within the purview of FDA, or which FDA indicates are unsuitable, will not be considered by GSA for donation.

(2) For purposes of obtaining the letter of clearance from FDA, the State agency or designated donee shall be responsible for obtaining samples from the holding agency, providing these samples to FDA, and ensuring the security of the samples while in transit. Before laboratory examinations are un-

dertaken by FDA, an estimate of the expected cost of the quality assurance examination shall be furnished by FDA to the State agency or donee. Payment of any costs for laboratory examinations for quality assurance of samples shall be arranged by the State agency or donee.

(3) Surplus drugs, biologicals, and reagents requested for donation by State agencies shall not be transported by the State agency or stored in its warehouse prior to distribution to donees. Arrangements will be made by the State agency for the donee to make direct pickup at the holding agency after approval by GSA and after notification by the holding agency that the property is ready for pickup.

(4) Standard Forms 123 from a State agency requesting surplus drugs, biologicals, and reagents for donation shall not be processed or approved by GSA until it has been determined by the GSA donation representative that the specific donee is legally licensed to administer, dispense, store, or distribute such property.

(5) The SF 123 shall also contain a statement that:

(i) The property is being requested for donation to a specific donee whose complete name and address, including the name and telephone number of the donee's authorized representative, appear on the front of the SF 123 in block 12, and that a copy of the donee's license, registration, or other legal authorization to administer, dispense, store, or distribute such property is attached and made a part of the SF 123;

(ii) The items will be distributed only to institutions licensed and authorized to administer and dispense such items or to organizations authorized to store such items; and

(iii) In addition to the normal certifications required to be executed by authorized representatives of donee institutions or organizations when property is acquired by donation, the State agency shall obtain a certification from the donee indicating that:

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

(B) Adequate facilities are available to effect full accountability and proper

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storage of the items under the Federal, State, and local statutes governing their acquisition, storage, and accountability;

(C) The administration or use of the items requested shall be in compliance with the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301-394).

(c) *Sales requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) or (b) of this section may be offered for sale by sealed bid under the provisions of subparts 101-45.3 and 101-42.4. The following safeguards and instructions shall be observed to ensure stability, potency, and suitability of the product and its labeling for use in civilian channels:

(1) Before reporting the surplus drugs, biologicals, and reagents to the selling agency pursuant to the provisions of §§101-45.303 and 101-42.402, holding agencies shall request that an examination be made by the Field Scientific Coordination Staff, ACFA-CF-30, located in the appropriate FDA district office, of surplus unexpired drugs and reagents, having an acquisition cost of \$500 or more per manufacturer's lot/batch number.

(i) When requesting such an examination, FDA requires the submission of a list and one sample of each of the drugs to be examined.

(ii) Additional samples may be requested if necessary for laboratory examination. Reimbursement for examination of the surplus drugs or reagents may be required by FDA. Before laboratory examinations are undertaken, FDA will give the inquiring agency an estimate of the expected costs. If, under subpart 101-45.9, the cost of the quality assurance is not justified by the value of the material involved, the lot or lots may be destroyed.

(iii) The reporting document prescribed in §101-45.303(b) shall have attached to it a copy of the letter received by the reporting agency from FDA stating that the articles offered have been reviewed and may appropriately be distributed or sold, subject

when necessary to specified limitations.

(2) Surplus drugs, biologicals, and reagents normally shall not be physically transferred to the selling agency but should remain at the holding agency for precautionary and safety measures.

(3) Surplus drugs, biologicals, and reagents shall be sold only to those entities which are legally qualified to engage in the sale, manufacture, or distribution of such items.

(4) Sales of surplus drugs, biologicals, and reagents other than controlled substances shall be processed as follows:

(i) The invitation for bids (IFB) shall:

(A) Consist only of surplus drugs, biologicals, and reagents;

(B) Contain the expiration date of material being offered for sale;

(C) Describe the composition of the material being offered for sale;

(D) Require the normal bid deposit prescribed in §101-45.304-10; and

(E) Contain the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certification as contained in this invitation. No award will be made or sale consummated until after this agency has determined that the bidder is legally licensed to engage in the manufacture, sale, or distribution of drugs.

(ii) The following certification shall be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid with a copy of his/her license. Failure to sign the certification may result in the bid being rejected as nonresponsive.

The bidder certifies that he/she is legally licensed to engage in the manufacture, sale, or distribution of drugs, and proof of his/her license to deal in such materials is furnished with this bid.

Name of bidder (print or type)

Signature of bidder

Address of bidder (print or type)

City, State, ZIP code

(d) *Destruction of surplus drugs, biologicals, and reagents.* (1) Surplus drugs, biologicals, and reagents shall

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not be abandoned under any circumstances. The following shall be destroyed by the holding agency under the provisions of this paragraph (d):

(i) Surplus drugs, biologicals, and reagents determined by the holding agency to be unsafe because of deterioration or overage condition, in open or broken containers, recommended for destruction by FDA, unfit for human consumption, or otherwise unusable; and

(ii) Surplus drugs, biologicals, and reagents which have been offered for sale under the provisions of paragraph (c) of this section but for which no satisfactory or acceptable bid or bids have been received.

(2) When surplus drugs, biologicals, and reagents are required to be destroyed by the holding agency or State agency, they shall be destroyed in such a manner as to ensure total destruction of the substance to preclude the use of any portion thereof. When major amounts are to be destroyed, the action shall be coordinated with local air and water pollution control authorities.

(3) Destruction of surplus drugs, biologicals, and reagents shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction.

(i) Disposal of Resource Conservation and Recovery Act (RCRA) regulated, noncontrolled, condemned hazardous substances in Federal supply class (FSC) 6505 shall be destroyed without the witnessing by two employees of the agency. The controls which the Environmental Protection Agency places upon the disposal of RCRA regulated noncontrolled drugs, 40 CFR part 260 *et seq.*, are sufficiently stringent to ensure that these drugs will be destroyed without agency witnessing.

(ii) It is the holding agency's responsibility to take all necessary measures to ensure that contractor performance is in accordance with the provisions of this §101-42.1102-5.

(4) When surplus drugs, biologicals, and reagents have been destroyed, the fact, manner, and date of the destruction and type and quantity destroyed shall be so certified by the agency em-

ployee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement, except as noted in paragraph (d)(3) of this section, which shall appear on the certification below the signature of the certifying employee:

I have witnessed the destruction of the (drugs, biologicals, and reagents) described in the foregoing certification in the manner and on the date stated herein:

Witness _____ Date _____

Witness _____ Date _____

(5) Items mentioned parenthetically in the statement contained in paragraph (d)(5) of this section which are not applicable at the time of destruction shall be deleted from the statement. The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency or State agency.

§ 101-42.1102-6 Noncertified and certified electronic products.

(a) *Utilization requirements.*(1) Excess electronic items for which radiation safety performance standards are prescribed by FDA under 21 CFR Part 1000 shall be reported or otherwise made available for transfer to Federal agencies under subparts 101-43.3 and 101-42.2. Excess reports shall identify noncertified electronic products and shall contain a statement that the items may not be in compliance with applicable radiation safety performance standards prescribed by FDA under 21 CFR Part 1000. Certified electronic products may be reported and transferred under the procedures in part 101-43.

(2) Transfers of noncertified electronic products among Federal agencies shall be accomplished as set forth in §§101-42.207, 101-43.309, and paragraph (a) of this section. The transfer order must contain a certification that the transferee is aware of the potential danger in using the item without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR Part 1000 and agrees to accept the item from

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the holding agency under these conditions.

(b) *Donation requirements.* (1) Surplus noncertified and certified electronic products not required for transfer as excess personal property to Federal agencies under paragraph (a) of this section shall be made available for donation screening as provided in subpart 101-42.3 and part 101-44 and as follows:

(i) Under paragraph (b)(2) of this section in the case of:

(A) Noncertified color television receivers;

(B) Certified and noncertified diagnostic X-ray systems and their major components;

(C) Certified and noncertified cabinet X-ray systems;

(D) Noncertified laser products; or

(E) Any other electronic products subject to an FDA performance standard.

(ii) Only under conditions of destructive salvage in the case of noncertified cold-cathode gas discharge tubes, noncertified black and white television receivers, and noncertified microwave ovens.

(2) Donation of electronic products designated in paragraph (b)(1)(i) of this section shall be accomplished as provided in §101-44.109 provided the State agency, Department of Defense (DOD), or Federal Aviation Administration (FAA):

(i) Provides the applicable State radiation control agency (see §101-45.4809) with a copy of the SF 123 and the name and address of the donee; and

(ii) Requires the donee to certify on the SF 123 that it:

(A) Is aware of the potential danger in using the product without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000, and agrees to accept the item from the holding agency for donation under those conditions;

(B) Agrees the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the item, its use, or its final disposition; and

(C) Agrees 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 donation of the item, its use, or its final disposition.

(c) *Sales requirements.* (1) The sale of the following certified and noncertified surplus electronic products which are not required for transfer or donation shall be accomplished under §101-45.304, subpart 101-42.4, and the special conditions of sale in this paragraph (c).

(i) Noncertified color and black and white television receivers;

(ii) Noncertified microwave ovens;

(iii) Noncertified and certified diagnostic X-ray systems and their major components;

(iv) Noncertified and certified cabinet X-ray systems;

(v) Noncertified laser products;

(vi) Noncertified cold-cathode gas discharge tubes under conditions of scrap or destructive salvage; and

(vii) Any other noncertified electronic product for which FDA may promulgate a performance standard.

(2) The IFB shall contain a notice to bidders substantially as follows:

Purchasers are warned that the item purchased herewith may not be in compliance with Food and Drug Administration radiation safety performance standards prescribed under 21 CFR part 1000, and use may constitute a potential for personal injury unless modified. The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item. The purchaser agrees to notify any subsequent purchaser of this property of the potential for personal injury in using this item without a radiation survey to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000.

(3) Within 30 calendar days following award, the selling agency shall provide the State radiation control agency for the State in which the buyer is located (see §101-45.4809) with a written notice of the award that includes the name

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and address of the purchaser and the description of the item sold.

(d) *Abandonment or destruction.* Non-certified and certified electronic products shall be abandoned under the provisions of subpart 101-45.9 and § 101-42.406.

§ 101-42.1102-7 Lead-containing paint and items bearing lead-containing paint.

(a) *General*—(1) *Health hazard.* Lead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems. Lead poisoning occurs most commonly when lead-containing paint chips in the environment are chewed or ingested by children or when lead-containing paint is burned off.

(2) *Banned hazardous products.* The following consumer products, in accordance with 16 CFR part 1303 and exemptions stated therein unless exempted by 16 CFR part 1303, are banned hazardous products:

(i) Paint and other similar surface coating materials for consumer use which are included within the definition of lead-containing paint.

(ii) Toys and other articles intended for use by children that bear lead-containing paint.

(iii) Furniture articles that bear lead-containing paint.

(3) *Disposal of banned hazardous products.* When a banned hazardous product described in paragraph (a)(2) of this section becomes excess to a holding agency, it shall be destroyed under paragraph (e) of this section except that those furniture articles that bear lead-containing paint may be stripped and refinished with a nonhazardous coating in lieu of destruction. Stripping shall be in conformance with Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.1025 which specify maximum permissible levels of exposure to airborne concentrations of lead particles and set forth methods of protection.

(4) *Exemptions.* (i) The categories of products listed in paragraph (a)(4)(ii) of this section are exempted from the scope of the ban established by 16 CFR Part 1303, provided that before any utilization, donation, or sales action:

(A) These products bear on the main panel of their label, in addition, to any labeling that may be otherwise required, the signal word *Warning* and the following statement: *Contains Lead. Dried Film of This Paint May be Harmful If Eaten or Chewed.*

(B) These products also bear on their label the following additional statement or its practical equivalent:

Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children. Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

KEEP OUT OF REACH OF CHILDREN

(C) The additional labeling requirements contained in 16 CFR 1303.3 and 16 CFR 1500.121 are followed.

(ii) The following products are exempt from the scope of the ban established by 16 CFR part 1303, provided they comply with the requirements of paragraph (a)(4)(i) of this section:

(A) Agricultural and industrial equipment refinish coatings.

(B) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

(C) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).

(D) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.

(E) Catalyzed coatings marketed solely for use on radio-controlled model-powered aircraft.

(iii) The following products are exempt from the scope of the ban established by 16 CFR part 1303 (no cautionary labeling is required):

(A) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.

(B) Artists' paints and related materials.

(C) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

(b) *Utilization requirements.* (1) Excess lead-containing paint and consumer products bearing lead containing paint which are exempt from the scope of the

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ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section shall be reported or otherwise made available to GSA under §§ 101-43.311 and 101-42.204.

(2) Lead-containing paint and consumer products bearing lead-containing paint available for further Federal use as provided in paragraph (b)(1) of this section may be transferred under §§ 101-43.309 and 101-42.207. The warning statement on the transfer order shall be substantially the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section, and such information shall be made a part of the accountable record of the transferee agency.

(c) *Donation requirements.* (1) Surplus lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban, and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be donated.

(2) The hazardous warning statement on the SF 123 shall be the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section. The recipient shall maintain the hazardous warning statements in the inventory records for the property and furnish appropriate warning information to subsequent recipients. The SF 123 and any other transaction documentation for such property shall contain a certification substantially as follows:

The property requested herein shall be used only as specified in 16 CFR 1303.3 and in no case shall be contacted by children. I agree the Government shall not be liable for personal injuries to, disabilities of, or death of the donee's employees, or any other person arising from or incident to the donation of this property, its use, or its final disposition; and 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 donation of this property, its use, or its final disposition.

(d) *Sales requirements.* (1) Lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be sold under § 101-

45.304, Subpart 101-42.4, and the special requirements of this paragraph (d).

(2) IFBs for such property shall clearly state the hazardous warning statements contained in paragraphs (a)(4)(i) (A) through (C) of this section and appropriate agreement clauses. The bid page shall contain a certification substantially as follows which must be properly executed. Failure to sign the certification may result in the bid being rejected as nonresponsive.

I certify that I have read and fully comprehend the aforementioned terms and conditions of this sale. I shall comply with the applicable Consumer Product Safety Commission regulations set forth in 16 CFR part 1303 if I am the successful bidder. I further agree the Government shall not be liable for personal injuries to, disabilities of, or death of any persons arising from or incident to the sale of this property, its uses, or its final disposition; and 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 sale of this property, its use, or its final disposition.

(3) Lead-containing paint and consumer products bearing lead-containing paint shall not be sold under the limited sales by holding agencies authority in § 101-45.304.

(e) *Abandonment and destruction.* In no case shall lead-containing paint or consumer products bearing lead-containing paint be abandoned in a manner that would allow acquisition and use of such property. Such products shall be disposed of under § 101-42.406. Empty cans/drums in which lead-containing paint was stored shall also be disposed of in accordance with this § 101-42.1102-7.

§ 101-42.1102-8 United States Munitions List items which require demilitarization.

(a) *General.* The United States Munitions List is located in 22 CFR part 121. A system of demilitarization codes has been developed and an appropriate code assigned to each Munitions List Item (MLI) to describe what, if any, restrictions or actual demilitarization requirements apply to each item. These codes, in addition to demilitarization policy and procedures for all surplus military items which are owned, procured by, or under the control of the

Department of Defense, are contained in the Defense Demilitarization Manual (DoD 4160.21-M-1). This §101-42.1102-8 applies only to MLIs and is to be used in conjunction with guidance in parts 101-42, 101-44, and 101-45.

(b) *Utilization requirements.* (1) Federal agencies acquiring MLIs which require demilitarization shall perpetuate the demilitarization codes in their property records and on subsequent reports of excess personal property submitted to GSA. Demilitarization shall be a condition of transfer of excess MLIs.

(2) Utilization without demilitarization of other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21-M-1.

(c) *Donation requirements.* (1) Donation without demilitarization of other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21-M-1.

(2) A State agency requesting the transfer of donation of MLIs identified as requiring demilitarization shall include the appropriate demilitarization code on the SF 123, and a statement that the State agency will obtain from the donee a certification that prior to further disposition, demilitarization of the property shall be performed by the donee under the demilitarization instructions for the code as set forth in the Defense Demilitarization Manual, DoD 4160.21-M-1. In the case of MLIs requested for donation by service educational activities or public airports pursuant to the provisions of subparts 101-44.4 and 101-44.5 respectively, the donee shall include a statement on the SF 123 certifying that appropriate demilitarization of the property will be accomplished under the requirements of the codes before further disposition.

(3) Before disposing of MLIs identified as requiring demilitarization, donees may request demilitarization instructions from GSA through the State agency if the donation was made pursuant to subpart 101-44.2. Demilitarization instructions for such items donated to public airports, under subpart 101-44.5, may be requested through the Federal Aviation Administration. Demilitarization instructions for such items donated to service educational

activities under subpart 101-44.4 may be obtained directly from the Item Technical Manager within DOD for the item involved.

(4) Demilitarization of property to be donated to public bodies under subpart 101-44.7 shall be accomplished in a manner to preserve so far as possible any civilian use or commercial value of the property, as prescribed in the minimum demilitarization requirements of the Defense Demilitarization Manual, DoD 4160.21-M-1.

(d) *Sales requirements.* (1) Except for sales authorized by statute, sales of “explosives” and “ammunition components” authorized by paragraphs (d) (2) and (3) of this section, or specialized sales authorized by the Secretary of Defense, MLIs identified as requiring demilitarization shall not be reported for public sale without first being demilitarized under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21-M-1 or requiring demilitarization under the terms and conditions of sale. GSA will, as necessary, refer technical questions on demilitarization to the Department of Defense.

(2) *Explosives.* For the purpose of this section, the term *explosive* means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and any other items appearing in the explosives list issued by the Secretary of the Treasury (18 U.S.C. 841(d)). The explosives list is published and revised at least annually in the Federal Register by the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, as required by 27 CFR 55.23. The following procedures shall apply in any disposal of explosives:

(i) All explosives offered for sale shall be properly identified in the offering with respect to their hazardous characteristics.

(ii) All explosives shall be labeled by the holding agency before shipment so that their hazardous or dangerous

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character will be immediately evident upon inspection.

(iii) Purchasers of explosives shall be required, as a condition of sale, to execute the following certification:

It is hereby certified that the purchaser will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, and local laws. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(3) *Ammunition components.* The term “ammunition components” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. The transportation of primers or propellant powder is governed by the Hazardous Materials Regulations (49 CFR parts 170-189) promulgated by the Department of Transportation. Purchasers of such materials are responsible to certify, based on their own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the Hazardous Materials Regulations. So that bidders will be notified of the special requirements concerning the purchase and transportation of usable ammunition components, the following statement shall be included in the IFBs and shall be made a part of the contract by including in it the bid form to be submitted by the bidders:

Item No. _____ contains ammunition components offered for sale in this invitation. The undersigned certifies that he/she will comply with all applicable local, State, and Federal laws and regulations concerning ammunition components.

(4) *Scrap ammunition components.* Ammunition components not usable or suitable for reuse as components of ammunition shall be reported and may be sold as scrap (for basic material content). With regard to such sale, the following statement shall be included in the invitation for bid and shall be made a part of the contract:

I, _____, certify that ammunition components purchased by me as Item No. _____, will not be used for the original manufactured purpose.

(e) *Abandonment and destruction requirements.* Besides the requirement of subpart 101-45.9, surplus munitions list items which require demilitarization shall be abandoned or disposed of under the requirements of §101-42.406, but only after performance of demilitarization under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21-M-1.

§ 101-42.1102-9 Acid contaminated and explosive contaminated property.

(a) *Utilization requirements.* (1) Acid contaminated or explosive contaminated property shall be considered extremely hazardous property, and as such is not to be reported to GSA as excess personal property. Such property may be available for transfer to qualified recipients; i.e., those who are able to submit valid justifications as required by paragraph (a)(3) of this section.

(2) Excess acid contaminated or explosive contaminated property shall be properly labeled under the labeling requirements of §101-42.204.

(3) With the authorization of the appropriate GSA regional office, holding activities may transfer acid contaminated or explosive contaminated property in conformance with the requirements of §§101-43.309-5 and 101-42.207. In addition, the requesting agency must submit a written justification with the transfer order explaining the specific need for and the anticipated uses of the requested acid or explosive contaminated property, and certify that personnel in contact with the property shall be informed of the hazard and shall be qualified to safely handle or use it.

(4) The degree of decontamination and the responsibility for performance and costs of any decontamination shall be upon such terms as agreed to by the owning agency and the receiving agency.

(5) The receiving agency is responsible for all transportation arrangements and costs of acid contaminated or explosive contaminated property approved for transfer. Such property

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shall be transported in compliance with §101-42.405.

(b) *Donation requirements.* Acid contaminated and explosive contaminated property may be donated only with the authorization of the appropriate GSA regional office.

(c) *Sales requirements.* (1) With the authorization of the appropriate GSA regional office, holding activities may sell acid contaminated or explosive contaminated property under §101-45.304, subpart 101-42.4, and the additional special requirements of this paragraph (c). Agencies shall include in reports of such property for sale on SF 126, a statement of the degree of contamination and any decontamination that has been performed, such as a washdown.

(2) Acid or explosive contaminated property shall be considered extremely hazardous property as defined in §101-42.001, and shall be described as such in sales offerings. Normally, acid or explosive contaminated property shall be sold with a condition that the purchaser sufficiently decontaminate the property to the degree that it is no longer extremely hazardous.

(3) IFBs for acid or explosive contaminated property shall clearly state the specific hazards associated with the items offered, along with known special handling, transportation, and personnel protection requirements. The bid page shall contain a certification substantially as follows which must be properly executed by the bidder in order for the bid to be responsive:

CERTIFICATION: It is hereby certified that the purchaser will comply with all the applicable Federal, State, and local laws ordinances and regulations with respect to the care, handling, storage, and shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, or local laws and regulations. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(d) *Abandonment and destruction.* Acid contaminated or explosive contaminated property shall not be abandoned, and when destroyed, such destruction shall be accomplished under the provi-

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sions of subparts 101-45.9 and §101-42.406.

§ 101-42.1102-10 Firearms.

(a) *Utilization requirements.* (1) In accordance with §101-43.4801(c) of this chapter, reports of excess reportable firearms and requests for their transfer must be submitted to the:

General Services Administration (7FP-8),
Denver, CO 80225-0506.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers must be executed under §101-43.309-5 of this chapter and, when applicable, §101-42.1102-8(b). Additional written justification from the requesting agency may be required.

(b) *Donation requirements.* (1) Only handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber in FSC 1005, and rifle and shoulder fired grenade launchers in FSC 1010, assigned a disposal condition code of 4 or better, as defined in §101-43.4801(e) of this chapter, may be offered by GSA (7FP-8) to State agencies for donation to eligible law enforcement entities for law enforcement purposes only. Donations are limited to only those eligible law enforcement entities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest. Such donations must be executed under §101-42.1102-8(c) as applicable.

(2) Each SF 123 submitted to GSA must be accompanied by a conditional transfer document, signed by both the intended donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA, and any other required forms or information.

(3) The restrictions on donated firearms shall be in perpetuity, and they may not be released by the State agency without prior written approval from GSA. The donee must notify the State agency when donated firearms are no longer needed. The State agency may, with GSA approval, reassign firearms from one donee to another donee within the state or to another SASP (see

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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).

PART 101-44—DONATION OF PERSONAL PROPERTY

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- 101-44.904 Obsolete material and articles of historic interest.
- 101-44.905 Obsolete or other Coast Guard material.

Subparts 101-44.10—101-44.46 [Reserved]

Subpart 101-44.47—Reports

- 101-44.4701 Reports.

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Subpart 101-44.48 [Reserved]

Subpart 101-44.49—Illustrations of Forms

- 101-44.4900 Scope of subpart.
- 101-44.4901 Standard forms.
- 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).
- 101-44.4901-123-1 Instructions for preparing and processing Standard Form 123.
- 101-44.4902 GSA forms.
- 101-44.4902-3040 GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.
- 101-44.4902-3040-1 Instructions for preparing GSA Form 3040.

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

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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]

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PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

- 101-45.000 Scope of part.
- 101-45.001 Requests for deviations.

Subpart 101-45.1—General

- 101-45.101 Applicability.
- 101-45.102 Needs of Federal agencies par-amount.
- 101-45.103 Sales responsibilities.
- 101-45.103-1 Conduct of sales.
- 101-45.103-2 Holding agency sales.
- 101-45.103-3 Sales by GSA.
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Subpart 101-45.3—Sale of Personal Property

- 101-45.300 Scope of subpart.
- 101-45.301 [Reserved]
- 101-45.302 Sale to Government employees.
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- 101-45.303-1 Describing property.
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- 101-45.304-3 [Reserved]
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- 101-45.304-5 Inspection by bidders.
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- 101-45.304-9 Credit.
- 101-45.304-10 Deposits and final payments.
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- 101-45.304-12 Sales to State and local governments.
- 101-45.305 [Reserved]
- 101-45.306 Contractor inventory.
- 101-45.307 Proceeds from sales.
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- 101-45.309 Special classes of property.
- 101-45.309-1 Agricultural commodities.
- 101-45.309-2 Hazardous materials.
- 101-45.309-3 Demilitarization and decontamination.
- 101-45.309-4 [Reserved]
- 101-45.309-5 Garbage.
- 101-45.309-6—101-45.309-7 [Reserved]
- 101-45.309-8 Bedding and upholstered furniture.
- 101-45.309-9 Gold.
- 101-45.309-10 Safes and locking file cabinets.
- 101-45.309-11 [Reserved]
- 101-45.309-12 Vehicle reconditioning.
- 101-45.309-13 All terrain vehicles.
- 101-45.310 Antitrust laws.
- 101-45.311 Assistance in controlling unauthorized transport of property.
- 101-45.312 [Reserved]
- 101-45.313 Procedures and forms concerning contingent or other fees for soliciting or securing contracts.
- 101-45.313-1 Purpose.
- 101-45.313-2 Objectives and methods.
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- 101-45.313-4 General principles and standards applicable to the covenant.
- 101-45.313-5 Standard Form 119, Contractor's Statement of Contingent or Other Fees.
- 101-45.313-6 Use of Standard Form 119, Contractor's Statement of Contingent or Other Fees.
- 101-45.313-7 Exceptions.
- 101-45.313-8 Enforcement.
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- 101-45.314 Federal excise taxes.
- 101-45.315 Equal Opportunity clause in contracts.
- 101-45.316 [Reserved]
- 101-45.317 Noncollusive bids and proposals.
- 101-45.318 Identical bids.

Subpart 101-45.4—Contract Disputes

- 101-45.400 Scope of subpart.
- 101-45.401 The disputes clause.
- 101-45.402 Alternative disputes resolution.

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Subpart 101-45.6—Debarred, Suspended, and Ineligible Contractors

- 101-45.600 Scope of subpart.
- 101-45.601 Policy.
- 101-45.602 Listing debarred or suspended contractors.

Subpart 101-45.7—Submission of Bids

- 101-45.700 Scope of subpart.
- 101-45.701 Responsiveness of bids.
- 101-45.702 Time of bid submission.
- 101-45.703 Late bids.
- 101-45.703-1 General.
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- 101-45.703-3 Telegraphic bids.
- 101-45.703-4 Handcarried bids.
- 101-45.703-5 Disposition of late bids.
- 101-45.703-6 Records.
- 101-45.704 Modification or withdrawal of bids.
- 101-45.705 Late modifications and withdrawals.

Subpart 101-45.8—Mistakes in Bids

- 101-45.800 Scope of subpart.
- 101-45.801 General.
- 101-45.802 Apparent clerical mistakes.
- 101-45.803 Other mistakes disclosed before award.
- 101-45.804 Mistakes disclosed after award.
- 101-45.805 Mistakes disclosed after award in negotiated sales.

Subpart 101-45.9—Abandonment or Destruction of Personal Property

- 101-45.900 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

Subpart 101-45.10—Recovery of Precious Metals

- 101-45.1000 Scope of subpart.
- 101-45.1001 General.
- 101-45.1002 Agency responsibilities.
- 101-45.1002-1 Precious metals recovery surveys.
- 101-45.1002-2 [Reserved]
- 101-45.1002-3 Precious metals recovery program monitor.
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- 101-45.1003 Recovery of silver from precious metals bearing materials.
- 101-45.1003-1 Guidelines for the recovery of silver from used hypo solution and scrap film.
- 101-45.1003-2 Recovery of silver from used hypo solution.
- 101-45.1003-3 Recovery of silver from scrap film.
- 101-45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.
- 101-45.1004-1 Civil agency participation in the DOD Precious Metals Recovery Program.
- 101-45.1004-2 Use of DOD-recovered fine precious metals.

**Subparts 101-45.11—101-45.46
[Reserved]**

Subpart 101-45.47—Reports

- 101-45.4700 Scope of subpart.
- 101-45.4701 [Reserved]
- 101-45.4702 Negotiated sales reports.

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Subpart 101-45.48—Exhibits

- 101-45.4800 Scope of subpart.
- 101-45.4801 Instructions for the preparation of advance notice to the Department of Commerce.
- 101-45.4802 Sample format—irrevocable letter of credit.
- 101-45.4803 General instructions for preparation of irrevocable letter of credit.
- 101-45.4804 Sample format—draft drawn against irrevocable letter of credit.
- 101-45.4805 Sample format—transmittal letter to accompany letter of credit.
- 101-45.4806 Outline for preparation of explanatory statement relative to negotiated sales.
- 101-45.4807 [Reserved]
- 101-45.4808 State health agencies.

Subpart 101-45.49—Illustrations of Forms

- 101-45.4900 Scope of subpart.
- 101-45.4901 Standard forms
- 101-45.4901-28 Standard Form 28, Affidavit of Individual Surety.
- 101-45.4901-97 Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.
- 101-45.4901-97-1 Instructions for use of Standard Form 97.
- 101-45.4901-114 Standard Form 114, Sale of Government Property—Bid and Award.
- 101-45.4901-114A Standard Form 114A, Sale of Government Property—Item Bid Page—Sealed Bid.
- 101-45.4901-114B Standard Form 114B, Sale of Government Property—Item Bid Page—Sealed Bid.
- 101-45.4901-114C Standard Form 114C, Sale of Government Property—General Sale Terms and Conditions.
- 101-45.4901-114C-1 Standard Form 114C-1, Sale of Government Property—Special Sealed Bid Conditions.
- 101-45.4901-114C-2 Standard Form 114C-2, Sale of Government Property—Special Sealed Bid—Term Conditions.
- 101-45.4901-114C-3 Standard Form 114C-3, Sale of Government Property—Special Spot Bid Conditions.
- 101-45.4901-114C-4 Standard Form 114C-4, Sale of Government Property—Special Auction Conditions.
- 101-45.4901-114D Standard Form 114D, Sale of Government Property—Amendment of Invitation for Bids/Modification of Contract.
- 101-45.4901-114E Standard Form 114E, Sale of Government Property—Negotiated Sales Contract.
- 101-45.4901-114F Standard Form 114F, Sale of Government Property—Item Bid Page—Spot Bid or Auction.
- 101-45.4901-126 Standard Form 126, Report of Personal Property for Sale.

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- 101-45.4901-126A Standard Form 126A, Report of Personal Property for Sale (Continuation Sheet).
- 101-45.4901-150 Standard Form 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property.
- 101-45.4901-151 Standard Form 151, Deposit Bond—Annual, Sale of Government Personal Property.
- 101-45.4902 GSA forms.
- 101-45.4902-27 GSA Form 27, Notice of Award (Sale of Government-Owned Personal Property).
- 101-45.4902-27A GSA Form 27A, Notice of Award—Continuation.
- 101-45.4903 Optional forms.
- 101-45.4903-15 Optional Form 15, poster, Sale of Government Property.
- 101-45.4903-16 Optional Form 16, Sales Slip, Sale of Government Personal Property.
- 101-45.4903-20 Optional Form 20, Notice to Surety—Deposit Bond—Annual Sale of Government Personal Property.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), §§101-45.400 to 101-45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 304f.

SOURCE: 30 FR 2930, Mar. 6, 1965, unless otherwise noted.

§ 101-45.000 Scope of part.

This part prescribes policies and methods governing the disposal by public sale, or abandonment or destruction of personal property (including salvage, scrap, and waste materials) owned by the Government except for foreign excess property and the recovery of precious metals. Additional guidelines regarding the sale, abandonment, or destruction of hazardous materials are prescribed in part 101-42.

[57 FR 39137, Aug. 28, 1992]

§ 101-45.001 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.

[53 FR 16120, May 5, 1988. Redesignated at 59 FR 50696, Oct. 5, 1994]

Subpart 101-45.1—General

§ 101-45.101 Applicability.

(a) This part 101-45 applies to all agencies in the executive, legislative, and judicial branches of the Government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction, to the extent provided in the Federal Property and Administrative Services Act of 1949, as amended (hereinafter generally referred to in this part 101-45 as “the Act”).

(b) The provisions of this part 101-45, relating specifically to sales of surplus personal property, do not apply to sales by the Secretary of Defense made pursuant to 10 U.S.C. 2576.

[34 FR 5172, Mar. 13, 1969]

§ 101-45.102 Needs of Federal agencies paramount.

Any need for personal property expressed by any Federal agency shall be paramount to any disposal, if such need is made known to the holding or selling agency prior to actual removal of the property from Government control in the case of sale.

[53 FR 16121, May 5, 1988]

§ 101-45.103 Sales responsibilities.

§ 101-45.103-1 Conduct of sales.

Heads of Federal agencies, or their designees, are responsible for determining whether their agencies will (a) report their personal property to the General Services Administration (GSA) for sale for a fee for services rendered or (b) conduct or contract for the sale of their own property. If agencies elect to sell their own property, a designation indicating such shall be entered on their reports of excess personal property to prevent GSA from automatically programming the property for sale.

[59 FR 50696, Oct. 5, 1994]

§ 101-45.103-2 Holding agency sales.

All provisions of Parts 101-45 and 101-46 shall be followed in conducting sales of Government-owned personal property. Agency internal procedures shall

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be issued to ensure compliance and uniformity and to protect the integrity of the sales process.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.103-3 Sales by GSA.

(a) For property reported to GSA for disposal, the following basic services will be provided at reimbursable rates established by GSA on an annual basis.

(1) Auction and spot bid sales. The following services are covered under the basic rate:

- (i) Property cataloging;
- (ii) Maintenance of mailing list;
- (iii) Printing and distribution of announcement to bidders on mailing list;
- (iv) Normal media advertising (one newspaper or equivalent);
- (v) Registration of bidders;
- (vi) Auctioneer;
- (vii) Onsite contracting officer;
- (viii) Award document preparation;
- (ix) Onsite collection of proceeds;
- (x) Follow-on collection of late payments;
- (xi) Security service;
- (xii) Deposit of proceeds;
- (xiii) Distribution of proceeds;
- (xiv) Financial and property line item accountability; and
- (xv) Contract administration.

(2) Sealed bid sales. The following services are covered under the basic rate:

- (i) Property cataloging;
- (ii) Maintenance of mailing list;
- (iii) Printing/distribution of invitation for bids to bidders on mailing list;
- (iv) Bid opening;
- (v) Contract awards;
- (vi) Preparation of award documents;
- (vii) Financial and property line item accountability; and
- (viii) Contract administration;

(b) GSA will deduct service charges from the proceeds of sale.

(c) For sales proceeds that are reimbursable to the holding agency, net proceeds (sales proceeds less GSA's direct, and indirect costs) will be distributed to the agency via the on-line payment and accounting control (OPAC) system.

(d) A portion of the proceeds from the sale of nonreimbursable surplus property will also be retained by GSA to cover its direct and indirect costs. The

net proceeds will be deposited to miscellaneous receipts of the Treasury.

(e) Rates for accessorial services, including transportation, storage, maintenance, and reconditioning of property prior to sale, will vary according to local market conditions and will be published in GSA regional bulletins available from the servicing GSA region.

(f) Agencies may be consulted to assist GSA in the determination of the best method of sale and their requirements for accessorial services.

(g) Property for which the sales contract is terminated for default will be resold at no cost to the holding agency. Property for which the sales contract is terminated for cause, e.g., misdescription of the property, will be resold at the holding agency's cost if the cause is attributable to the holding agency.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.103-4 Sales conducted at holding agency facilities.

If GSA sells property from holding agency facilities, holding agencies shall be responsible for the following:

(a) Providing the appropriate GSA regional office with information necessary for effective sale of property and the accounting data for appropriate application of gross proceeds;

(b) Transporting property to a consolidated sales site when agreed to by the holding agency and GSA;

(c) Providing for the inspection of property by prospective bidders;

(d) Providing facilities for the conduct of sales and the essential administrative, clerical, or labor assistance when requested by GSA; and

(e) Assisting in the physical lotting of property to be sold at agency facilities.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.104 Care and handling pending disposal.

Pending disposal, each holding agency shall be responsible for performing, and bear the cost of, care and handling of its property.

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§ 101-45.105 Exclusions and exemptions.

§ 101-45.105-1 Materials required for the national stockpile or the supplemental stockpile, or under the Defense Production Act.

This part 101-45 does not apply to materials acquired for the national stockpile or the supplemental stockpile or to materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093). However, to the extent deemed appropriate the provisions of this part 101-45 should be followed in the disposal of such materials.

§ 101-45.105-2 Disposal of certain vessels.

The Secretary of Transportation has jurisdiction over the disposal of vessels of 1,500 gross tons or more which the Secretary determines to be merchant vessels or capable of conversion to merchant use.

[53 FR 16121, May 5, 1988]

§ 101-45.105-3 Exemptions.

Exemptions from the provisions of this Part 101-45 may be obtained by an agency head who believes that authority with respect to the programs covered by section 602(d) of the Act would be impaired or adversely affected by this part. Exemptions may be requested, in writing, from the Administrator of General Services.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.106 Property controlled by other law.

No property shall be disposed of in violation of any other applicable law.

§ 101-45.107 Holding agency compliance function.

Subject to the provisions of § 101-45.107-1 requiring referral of criminal matters to the Department of Justice, each holding agency shall perform investigatory functions as are necessary to insure compliance with the provisions of the Federal Property Act and with the regulations, orders, directives, and policy statements of the Administrator of General Services. Nothing in this § 101-45.107 should be deemed to af-

fect the jurisdiction of any agency over its own personnel or any existing arrangements with Department of Justice concerning the handling and prosecution of criminal matters.

§ 101-45.107-1 Referral to other Government agencies.

All information indicating violations by any person of Federal criminal statutes, or violations of section 209 of the Federal Property Act, including, but not limited to, fraud against the Government, mail fraud, bribery, attempted bribery, or criminal collusion, shall be referred immediately to the Department of Justice, for further investigation and disposition. Each holding agency shall make available to the Department of Justice, or to such other governmental investigating agency to which the matter may be referred by the Department of Justice, all pertinent information and evidence concerning the indicated violations; shall desist from further investigation of the criminal aspects of such matters except upon the request of the Department of Justice; and shall cooperate fully with the agency assuming final jurisdiction in establishing proof of criminal violations. After making the necessary referral to the Department of Justice, inquiries conducted by the holding agency compliance organizations shall be limited to obtaining information for administrative purposes. Where irregularities reported or discovered involve wrongdoing on the part of individuals holding positions in Government agencies other than the agency initiating the investigation, the case shall be reported immediately to the Administrator of General Services for an examination in the premises.

§ 101-45.107-2 Compliance reports.

A written report shall be prepared on all compliance investigations conducted by each agency compliance organization. Each holding agency shall maintain files of all such reports. Until otherwise directed by the Administrator of General Services, there shall be transmitted promptly to GSA one copy of any such report which contains information indicating criminality on the part of any person or indicating substantial noncompliance with the

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Act or with the regulations, orders, directives, and policy statements of the Administrator of General Services. In transmitting such reports to the Administrator of General Services, the agency shall set forth the action taken or contemplated by the agency to correct the improper conditions disclosed by the investigation. Where any matter is referred to the Department of Justice, a copy of the letter of referral shall be transmitted to GSA.

Subpart 101-45.2 [Reserved]

Subpart 101-45.3—Sale of Personal Property

§ 101-45.300 Scope of subpart.

This subpart prescribes the policies and methods governing the disposal of personal property by sale.

§ 101-45.301 [Reserved]

§ 101-45.302 Sale to Government employees.

To the extent not prohibited by the regulations of an executive agency, an employee of such agency (either as a civilian or as a member of the Armed Forces of the United States, including the U.S. Coast Guard, on active duty) may be allowed to purchase Government personal property. The term employee as used in this section includes an agent or immediate member of the household of the employee.

[35 FR 14134, Sept. 5, 1970]

§ 101-45.303 Reporting property for sale.

If holding agencies elect to have GSA sell their property, it shall be reported to the appropriate GSA regional office for the region in which the property is physically located in the manner outlined below:

(a) *Reportable property.* Property required to be reported to the GSA regional offices for utilization screening as set forth in part 101-43, if not transferred or donated, will be programmed for sale by the GSA regional office.

(b) *Nonreportable property.* Property not required to be reported for utilization screening and for which any required donation screening has been

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completed shall be reported to the appropriate GSA regional office on Standard Form 126, Report of Personal Property for Sale (illustrated in § 101-45.4901-126). Standard Form 126A, Report of Personal Property for Sale—Continuation Sheet, shall be used if additional pages are required. Standard Forms 126 and 126A are stocked as five-part carbon interleaved forms and may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

[30 FR 2930, Mar. 6, 1965, as amended at 31 FR 5000, Mar. 26, 1966; 42 FR 40852, Aug. 12, 1977; 59 FR 50697, Oct. 5, 1994]

§ 101-45.303-1 Describing property.

In the interest of good business practice, property reported for sale shall be described in commercial terminology and as fully and accurately as possible, including its condition.

§ 101-45.303-2 Display and inspection.

Holding agencies shall assist prospective bidders to the maximum extent possible during the inspection period prescribed in the sales offering. However, no information shall be provided to a prospective bidder which is not available to all bidders.

§ 101-45.303-3 Delivery.

(a) After full payment has been received from a buyer, the GSA regional office will notify the holding activity by copy of the GSA Form 27A, Purchaser's Receipt and Authority to Release Property, that property may be released to the purchaser. (See §§ 101-45.4902-27A (over-the-counter and self-mailer)). Upon completion of a sale, the servicing GSA finance office will simultaneously forward to the holding activity additional copies of the GSA Form 27A and completed copies of Standard Form 1081, Voucher and Schedule of Withdrawals and Credits, for use as internal accounting documents.

(b) If a purchaser fails to remove property within the period specified, the GSA regional office shall be advised of this fact, in writing, immediately in order that appropriate action may be taken.

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(c) The Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, is a four-part form issued on continuous feed paper. The original certificate is produced on secure paper to readily identify any attempt to alter the form. The SF 97 shall be signed in accordance with requirements established by the head of the agency selling the vehicle. The SF 97 is an accountable form and is serially numbered during the printing process. Each agency shall have an accountable officer who will be responsible for the requisition, storage, and issuance of the SF 97. Certificates showing erasures or strikeovers will be considered invalid. Proper precautions shall be exercised by all agency accountable officers to prevent blank copies of the SF 97 from being obtained by unauthorized persons.

(d) Delivery of motor vehicles to purchasers shall be evidenced by submission to the purchaser of a completed original of the SF 97. Two copies of the SF 97 shall be furnished to the owning agency (one copy for the reporting office and one copy for the custodian) and the other copy shall be furnished the contracting officer of the agency effecting the sale or transfer of the motor vehicle. The SF 97 is illustrated at §101-45.4901-97. Other certificates of release or bills of sale shall not be used in lieu of the SF 97. Instructions for the use of the SF 97 are in §101-45.4901-97-1.

[53 FR 16121, May 5, 1988, as amended at 57 FR 32446, July 22, 1992]

§ 101-45.304 Sales methods and procedures.

§ 101-45.304-1 Competitive bid sales.

Except as provided in §101-45.304-2, property shall be sold by competitive bid sale after advertising, in accordance with this §101-45.304-1. Competitive bid sales include the following:

(a) *Sealed bid sales.* In sealed bid sales, bidders shall be required to submit, to the office designated for receipt and opening of bids, sealed written bids on authorized bid forms for public opening at a time and place designated.

(b) *Spot bid sales.* In spot bid sales, bidders shall be furnished with bid forms in advance of the bidding, a bid

form to be used for each lot or unit to be separately sold. Requests for bids on items offered for sale shall be made by the official in charge. In requesting bids, the official in charge shall announce the item, its identification number, and a brief description of the item or lot. The right to reject all such bids for a lot or item shall be reserved in the terms of sale; and when the Invitation for Bids so specifies, lots or items for which all bids have been rejected may be reoffered at the same sale in order to secure an acceptable bid price. After examining all bids, award shall be made or bids rejected immediately following the offering of the item or lot. The bids at spot bid sales shall not be disclosed prior to the announcement of award for any item or lot. Where mailed written or drop bids are permitted, they shall not be disclosed to the public prior to the announcement of award. Bidders may be required to register in advance of the sale. Any special condition of sale shall be set out in the Invitation for Bids in order to assure that all bidders are afforded an opportunity to compete on the same terms and conditions.

(c) *Auction sales.* When the terms and conditions of sale have been published and distributed to participating buyers, any special or unusual conditions of sale shall be announced by the person conducting the auction, immediately prior to commencement of the sale. Offerings must reserve in the Government, the right to accept or reject any or all bids. Lots for which all offers have been rejected may be reoffered later at the same sale to secure acceptable bids, when the published terms and conditions so provide.

§ 101-45.304-2 Negotiated sales and negotiated sales at fixed prices.

(a) *Circumstances permitting negotiated sales.* While it is the policy to sell property after publicly advertising for bids, property also may be sold by negotiation, subject to obtaining such competition as is feasible under the circumstances, where:

(1) It is determined by the agency that the sale involves property:

(i) That has an estimated fair market value not in excess of \$15,000;

(ii) Where public exigency will not admit of the delay incident to advertising;

(iii) Where bid prices after advertising therefor are not reasonable (either as to all or some part of the property), or bid prices have not been independently arrived at in open competition, and it is determined that readvertising will serve no useful purpose: *Provided*, That all responsible bidders who responded to the previous advertising shall be afforded an opportunity to submit offers for the property; or

(iv) That the disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and that the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation. (See §101-45.304-12.)

(2) Full and adequate justification therefor has been submitted to the head of the selling agency or his designee for prior approval, and he has determined:

(i) That the public health, safety, or national security will thereby be promoted; or

(ii) That it is necessary in the public interest during the period of a national emergency declared by the President or the Congress. The authority of this subdivision shall be used only with respect to a particular lot or lots of personal property identified by the Administrator of General Services or a specifically described category or categories of property determined by the Administrator of General Services during any period fixed by the Administrator of General Services, but not in excess of three months. Declaration of a national emergency alone is not justification for use of this authority; there must be other reasons making use of negotiation necessary in the public interest.

(3) Full and adequate justification therefor has been submitted to the Administrator of General Services for his prior approval, and he has determined that the property involved is of a nature and quantity which, if disposed of by advertising would cause such an impact on an industry or industries as to adversely affect the national economy: *Provided*, That the estimated fair mar-

ket value of such property and other satisfactory terms of disposal can be obtained by negotiation.

(4) Negotiation is otherwise authorized by the Act or other law.

(b) *Negotiated sales at fixed prices.* (1) Property may be sold at fixed prices, either directly or through the use of disposal contractors, only with prior approval by the Administrator of General Services (or designee) of the property categories to be sold.

(2) In accordance with §101-45.304-12, prior to offering property to the public, it may be offered at fixed prices, through State agencies for surplus property, to State and local governments (States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein) which have expressed an interest in the property.

(c) *Explanatory statements.* Subject to the exceptions stated in §101-45.304-2(c)(2), the selling agency shall prepare an explanatory statement as required by section 203(e)(6) of the Act of the circumstances of each proposed disposal by negotiation.

(1) Ten copies of each explanatory statement, mechanically reproduced, shall be submitted to the Administrator of General Services for review and transmittal by the Administrator to the appropriate committees of the Senate and House of Representatives and a copy thereof shall be preserved in the files of the selling agency. Such statements shall be submitted as early as practicable in advance of each proposal. Copies of the Administrator's transmittal letters to the committees will be furnished to the selling agency. In the absence of any action by a committee on the proposed negotiated disposal, the selling agency may consummate the sale on or after 35 days from the date of the Administrator's letters transmitting the explanatory statement to the committees.

(2) The explanatory statement need not be:

(i) Transmitted for a disposal of personal property at fixed prices when previously authorized pursuant to §101-45.304-2(b);

(ii) Transmitted for a disposal of personal property authorized to be made without advertising by any provision of

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law other than section 203(e) of the Act; or

(iii) Prepared for a disposal of personal property having a fair market value of \$15,000 or less.

(3) An outline for the preparation of the explanatory statement is shown in § 101-45.4806.

[30 FR 2930, Mar. 6, 1965, as amended at 31 FR 5001, Mar. 26, 1966; 34 FR 7329, May 6, 1969; 42 FR 40853, Aug. 12, 1977; 54 FR 38676, Sept. 20, 1989; 55 FR 17609, Apr. 26, 1990]

§ 101-45.304-3 [Reserved]

§ 101-45.304-4 Lotting.

To the extent practicable, and consistent with the types of property and usual commercial practice, property offered for sale shall be assembled in reasonably sized lots of like or similar items by make or manufacturer. Unused property shall be lotted separately from used items. Scrap and other property having scrap value only shall be lotted in accordance with established trade practice and shall generally not be included in the same sale with usable items. Determination of the size of lots shall take into consideration the buying capacities of prospective buyers and the requirement that adequate competition be obtained. Large quantities of identical items shall be lotted in such a way as to encourage bidding by small businesses and individuals.

§ 101-45.304-5 Inspection by bidders.

Sufficient time prior to the date for submission of bids shall be allowed to permit inspection by potential bidders. Such time should be a minimum of 7 or a maximum of 21 calendar days, depending upon the circumstances of the sale, the method of the sale, or the volume of property offered for sale. Whenever the inspection period is proposed to be less than 7 days, invitations for bids, flyers, or other announcements shall be distributed to prospective bidders sufficiently in advance of the inspection period.

[31 FR 5001, Mar. 26, 1966]

§ 101-45.304-6 Reviewing authority.

(a) A "reviewing authority" is a local, regional, or departmental board of review of an executive agency. Under

subpart 101-45.9, reviewing authority also includes an applicable State board of review of a State agency for surplus property.

(b) Approval by reviewing authority of the agency effecting the sale shall be required for each proposed award when the contract value (actual or estimated fair market value) for property other than scrap exceeds the dollar thresholds listed below by method of sale:

(1) Negotiated sale of surplus property—\$15,000 or more;

(2) Negotiated sale at fixed price of surplus or exchange/sale property—\$25,000 or more; and

(3) Competitive bid sale—\$100,000 or more.

[59 FR 50697, Oct. 5, 1994]

§ 101-45.304-7 Advertising.

Adequate public notice shall be given to each offering for sale of property to be disposed of after advertising. Except where the nature or condition of the property does not permit, advertising shall be made in sufficient time previous to sale to permit full and free competition. The extent of solicitation shall have due regard to the quantity and type of property to be sold, the logical market of disposal, the type of sale contemplated, and the public interest.

(a) *Advertising media by type of sales*—
(1) *Sealed bid sales.* In the case of sealed bid sales, advertising shall be by the distribution of written invitations for bids including public posting thereof and may be supplemented by newspaper or trade journal advertising (ordered in accordance with existing law) where advisable.

(2) *Spot bid sales.* Advertising in the case of spot bid sales shall be by written invitation for bids or other appropriate notices, including public posting thereof. Notice of such sales may also be given by appropriate newspaper or trade journal advertising (ordered in accordance with existing law) where advisable.

(3) *Auction sales.* In the case of auction sales, newspaper or trade journal advertising ordinarily should be employed (ordered in accordance with existing law) in addition to other written notice deemed appropriate.

(b) *Advance sale notices to Department of Commerce.* In order that the Department of Commerce may publish regularly synopsis of principal proposed sales of Government personal property, the sales office shall, when the acquisition cost of the property to be sold at one time at one place is \$250,000 or more, forward a notice of each proposed sale to the U.S. Department of Commerce, room 1300, 433 West Van Buren Street, Chicago, IL 60607. Where the acquisition cost is less than this amount, the notice may be transmitted when considered desirable. The notice shall be sent as early as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. The notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing directly from the text as transmitted without editing or condensing. Instructions for the preparation of advance sale notices, including form and content thereof are set forth in §101-45.4910. The failure to comply with the advance notice of sale requirements of this §101-45.304-7(b) shall not, in and of itself, affect the validity of a sales award which is otherwise valid.

(c) The appropriate GSA regional office shall be provided, at the time of public distribution, a copy of each invitation for bids or other form of offering involving contractor inventory, whether being sold by the contractor for the Government or by a Government activity authorized to conduct sales.

[30 FR 2930, Mar. 6, 1965, as amended at 42 FR 40853, Aug. 12, 1977; 52 FR 23831, June 25, 1987; 59 FR 50697, Oct. 5, 1994]

§ 101-45.304-8 Forms prescribed.

Standard Forms 114, 114A, 114B, 114C, 114C-1, 114C-2, 114C-3, 114C-4, 114D, 114E, and 114F (illustrated at §§1010-45.4901-114 through 101-45.4901-114F) shall be used, where appropriate, in sales of personal property except that Standard Form 114C is not applicable to those sales involving any strategic metals, minerals, and ores which have been determined surplus pursuant to the Act. These forms will be stocked by GSA as cut sheets only. Authority for the use of such forms in styles other

than cut sheets may be granted when requests for such deviation are submitted in accordance with §101-26.302.

(a) *Deviation.* To ensure inclusion of appropriate terms, conditions, clauses, etc., in Government sales contracts, no deviation shall be made from the Standard Form 114 series, and no special conditions of sales shall be included that are inconsistent with the provisions contained therein, unless approval is obtained from the Commissioner, Federal Supply Service (F) (mailing address: General Services Administration, Washington, DC 20406).

(b) *Cover sheet.* The development and use of a cover sheet will be at the option of the selling agencies. However, if a cover sheet is used, it should be developed so as to be uniform for and identified primarily with the selling agency and secondarily with the selling activities of such agency. The cover sheet should contain only the "what-where-when" types of information, such as the method of sale (i.e., sealed bid, spot bid, auction); sale (invitation for bids) number; general category(ies) of property being offered; identification of the selling activity; inspection period; and the bid opening time and date of the sale. Nothing of a binding nature either on the part of the bidder or the Government shall be included on this cover sheet.

(c) *Description of standard forms—(1) Standard Form 114, Sale of Government Property—Bid and Award.* (i) Standard Form 114, has spaces to be completed by the issuing sales activity and the bidder. Some of the information furnished by the issuing sales activity is as follows: Invitation for bids number; name and address of issuing sales activity; person to contact for sales information; address to which bids should be mailed; place, date, and time of bid opening; whether or not bid deposit is required; and the number of days for payment to be made and property to be removed. In addition, the form provides that the Standard Form 114C, General Sale Terms and Conditions, and the standard form of special conditions applicable to the method of sale being employed are made a part of the invitation for bids by reference. The block indicating the standard form

of special conditions for the appropriate method of sale must be checked by the issuing sales agency. If special terms and conditions in addition to those contained in the prescribed standard forms are to be made a part of the invitation by reference, such additional terms and conditions should be identified by a form number and so indicated in the appropriate place on Standard Form 114. Special terms and conditions that are not identified by a form number must be included in the invitation and not made a part thereof by reference. Standard Form 114C and the applicable standard form of special conditions may be attached to the invitation for bids at the option of the executive agency. Information to be furnished by the bidder is as follows: Number of days but not less than 10, for Government's acceptance of the bid, if desired; total amount of bids; amount and form of bid deposit, when required; whether or not property was inspected; small business representation; and contingent fee representation. Standard Form 114 shall be made a part of sealed bid sales and may be used in auction and spot bid sales.

(ii) The time set for bid opening or commencement of a sale shall be the local time at the place of bid opening or sale and shall be indicated in the appropriate block on Standard Form 114. The opening time shall include the phrase "local time at the place of bid opening" in lieu of references to "daylight time" or "daylight saving time" and abbreviations such as "EDT" or "PDT." Where the block on Standard Form 114 does not readily permit the inclusion of the phrase "local time at the place of bid opening," an asterisk shall be used to call attention to an explanatory phrase which shall be stated elsewhere in the invitation for bids. The time set for commencement of spot bid and auction sales shall also be the local time at the place of sale and shall be indicated in an appropriate place in invitations for bids and sales offerings.

(2) *Standard Form 114A, Sale of Government Property—Item Bid Page—Sealed Bid.* Standard Form 114A requires entries to be made by the bidder prior to submission of bid. It provides for the bidder to enter the item number of the

property on which he is bidding, his offered unit price bid per item, and his total price bid per item. Except as provided in paragraph (3) of this paragraph (c), Standard Form 114A shall be made a part of sealed bid sales.

(3) *Standard Form 114B, Sale of Government Property—Item Bid Page—Sealed Bid.* Standard Form 114B may be used in lieu of Standard form 114A only when:

(i) The number of items of property being sold can be described sufficiently on one page;

(ii) Property is offered on an "as generated" basis (term-type sale);

(iii) Bidding on an increment basis is permitted by the terms and conditions of the sale; or

(iv) The use of Standard Form 114A might not be appropriate, in which case a short, accurate, and to the extent feasible, commercially clear description shall be prepared for each item offered for sale.

(4) *Standard Form 114C, Sale of Government Property—General Sale Terms and Conditions.* Standard Form 114C, is applicable to all sales of personal property (including sales by negotiation) and shall be made a part of all sales invitations, either by reference or by attachment thereto or both.

(5) *Standard Form 114C-1, Sale of Government Property—Special Sealed Bid Conditions.* Standard Form 114C-1, is in addition to the Standard Form 114C and is applicable only to sealed bid sales (other than term-type sales) and shall be made a part of all such sales invitations, either by reference or by attachment thereto or both.

(6) *Standard Form 114C-2, Sale of Government Property—Special Sealed Bid-Term Conditions.* Standard Form 114C-2, is applicable only to sealed bid term-type sales and is in addition to the Standard Form 114C. The form shall be made a part of all such sales invitations, either by reference or by attachment thereto, or both.

(7) *Standard Form 114C-3, Sale of Government Property—Special Spot Bid Conditions.* Standard Form 114C-3, is applicable only to spot bid sales and is in addition to the Standard Form 114C. The form shall be made a part of all sales announcements, bidders registers,

and bid cards, either by reference or by attachment thereto or both.

(8) *Standard Form 114C-4, Sale of Government Property—Special Auction Conditions.* Standard Form 114C-4, is applicable only to auction sales and is in addition to the Standard Form 114C. The form shall be made a part of all sales announcements and bidders registers, either by reference or by attachment thereto or both.

(d) *Other special conditions.* (1) Other special terms and conditions considered by a selling agency to be necessary for the particular property offered for sale and not inconsistent with those contained in the forms prescribed in this §101-45.304-8 may be incorporated in invitations for bids in which these forms are used. These additional terms and conditions should be kept to a minimum. To the extent practicable, incorporation of these special conditions should be accomplished by a special form developed by the selling agency for that purpose and so indicated on Standard Form 114, Sale of Government Property—Bid and Award. Each selling agency shall review periodically these terms and conditions that are commonly used in its agency to standardize those in general use and eliminate unnecessary additions. The agency shall periodically forward to the Commissioner, Federal Property Resources Service (General Services Administration (D), Washington, DC 20406), the additional terms and conditions desirable for inclusion in the Standard Forms.

(2) Standard Form 114, Sale of Government Property—Bid and Award, incorporates by reference Standard Form 114C and Standard Forms 114C-1 and 114C-2, as appropriate. Therefore, it is not necessary to attach such forms each time invitations for bids are issued, but an agency may elect to do so. It is essential, however, that any terms and conditions incorporated in an invitation by reference be furnished to any prospective bidder promptly on request.

(e) *Standard Form 114D, Sale of Government Property—Amendment of Invitation for Bids/Modification of Contract.* Standard Form 114D, is applicable to all sales of personal property and shall be used as required.

(1) *Amendment.* (i) If after issuance of an invitation for bids, but before the time set for opening of bids or the start of a sale, it becomes necessary to make changes to the invitation, the changes shall be accomplished by the issuance of an amendment to the invitation for bids on Standard Form 114D. The amendment shall be sent to each firm or individual to whom the invitation for bids has been furnished and shall be displayed in the bid room. In the event an amendment must be issued to either an auction or spot bid invitation for bids in which mailed-in bids are not authorized and where time does not permit distribution by mail, such amendment may be issued at the time of bidder registration.

(ii) When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation sent to all prospective bidders to whom invitations for bids were issued identifying the invitation and briefly explaining the reason for the cancellation.

(2) *Supplemental agreement.* A supplemental agreement is required for a contract modification which, in accordance with the contractual provisions, cannot be accomplished by unilateral action of the Government. Such supplemental agreement must be mutually agreed to by both parties and be distributed in the same manner as the original contract. Modifications to contracts require careful consideration before issuance and the sales contracting officer should be absolutely certain that the information contained in the supplemental agreement is accurate. In addition, the sales contracting officer must satisfy himself that the contract modification is authorized and that as a result of the contract modification, the purchaser will enjoy no advantage or gain which is uncompensated, or which would not reasonably flow from the terms and conditions of the invitation for bids or the solicitation of offers out of which the original contract arose.

(f) *Standard Form 114E, Sale of Government Property—Negotiated Sales Contract.* Standard Form 114E, is applicable only to negotiated sales and is used to confirm quotations received from

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offerors contracted by the selling activity and constitutes the sales contract upon execution by the purchaser and by the Government. Standard Form 114E shall have attached thereto or made a part thereof by reference, Standard Form 114C, General Sale Terms and Conditions, and those additional special terms and conditions applicable only to the specific negotiation concerned.

(g) *Standard Form 114F, Sale of Government Property—Item Bid Page—Spot Bid or Auction.* Standard Form 114F, is used only when mailed-in bids are authorized in connection with a spot bid or auction sale.

(h) *Description of property for sale.* The invitation for bids shall include a listing of the property being offered for sale and each unit or line item shall be assigned a specific item number. The property should be adequately described including all factual information necessary to convey to prospective bidders an accurate, concise, and clear understanding of the property being offered. To the extent applicable, the following guideline information should be included as a part of the description:

(1) Noun name and other descriptive information expressed in understandable commercial terms.

(2) Part numbers and pertinent specifications as to sizes, type, etc.

(3) Manufacturers' name or trade name and year of manufacture.

(4) Estimated total weight or cube.

(5) Condition of property limited generally to statements of fact such as "unused" or "used." To these general statements there may be added, when known and applicable, information such as "parts missing," "wrecked," "major components removed," etc.

(6) Quantity stated in the same unit of measure as that for which bids are solicited (each, pound, ton, per lot, etc.), such units to conform with established trade practices in the industry or commodity area in which the property falls.

(7) Original acquisition cost, if known, or estimated cost (and so indicated) may be included.

(8) Location of the property; dates and time available for inspection; and name, title, and telephone number of custodian.

(i) *Removal of property.* A reasonable period of time shall be afforded successful purchasers to effect complete removal of the property and must be set forth in the invitation for bids.

[35 FR 12119, July 29, 1970, as amended at 42 FR 40853, Aug. 12, 1977; 46 FR 39592, Aug. 4, 1981; 59 FR 50697, Oct. 5, 1994]

§ 101-45.304-9 Credit.

Except as authorized in §101-45.304-12, personal property shall not be offered for sale or sold on credit without the prior approval of the Administrator of General Services or his designee. When approved, the terms and conditions of sale shall specifically provide therefor.

§ 101-45.304-10 Deposits and final payments.

(a) Whenever a bid deposit is required by the terms and conditions of the invitation for bids, the normal deposit for individual type sales shall be 20 percent of the total amount of the bid. For sales of property on an "as generated" basis during a stated period of time (referred to as term contracts), the normal deposit shall not be less than an amount which will adequately protect the Government's interest, normally 20 percent of the estimated contract price. However, the bid deposit for a term contract in excess of 1 year's duration shall not exceed 20 percent of the total price estimated for 1 year's removal of property.

(b) Whenever a bid deposit is required by the terms and conditions of the invitation for bids, such deposit shall be in U.S. currency or any form of credit instrument other than a promissory note, made payable on demand in U.S. currency, except as provided for in condition number 4 of Standard Form 114C, General Sales Terms and Conditions. Postdated credit instruments are not acceptable. Deposit bonds submitted on Standard Forms 150 and 151 (illustrated in §§101-45.4901-50 and 101-45.4901-151) may also be accepted when provided for in the invitation for bids.

(c) Irrevocable commercial letters of credit issued by a bank established in the United States, payable to the Treasurer of the United States or to the Government agency conducting the

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sale, may be used in lieu of the foregoing forms of deposit. Such letters shall be substantially in the format shown in §101-45.4802. General instructions relating to the preparation of letters of credit are also contained in §101-45.4803.

(d) Any draft drawn against such letter of credit shall be substantially in the format shown in §101-45.4804. The draft shall be accompanied by a transmittal letter and certification substantially in the format shown in §101-45.4805.

(e) Final payments shall be acceptable in the same forms as for bid deposits, with the exception of deposit bonds.

(f) Potential buyers shall be notified as to the exact organizational entity to the order of which the prescribed form of deposit is to be made payable. In no event shall a bid be rejected solely on the grounds that the instrument of deposit is made payable to the Treasurer of the United States when the offering specifies that it be made payable to the Government agency conducting the sale, or conversely, as the case may be.

[30 FR 2930, Mar. 6, 1965, as amended at 35 FR 12121, July 29, 1970; 42 FR 40854, Aug. 12, 1977]

§ 101-45.304-11 Deposit bonds.

(a) *Standard forms.* The following standard forms, as applicable, shall be used when a bond, in lieu of cash or other acceptable form of bid deposit, is permitted by the sales invitation.

(1) Standard Form 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property. (See §101-45.4901-150.)

(2) Standard Form 151, Deposit Bond—Annual, Sale of Government Personal Property. (See §101-45.4901-151.)

(3) Standard Form 28, Affidavit of Individual Surety. (See §101-45.4901-28.)

(b) *Instructions and procedures.* (1) Comprehensive instructions for the execution and use of Standard Form 150, Deposit Bond—Individual Invitation; Standard Form 151, Deposit Bond—Annual; and Standard Form 28, Affidavit of Individual Surety, are provided on the reverse of each form. Implementing instructions shall be consistent therewith.

(2) Standard Form 151, Deposit Bond—Annual, contains the following provision:

Upon the making of an award to the principal, or within a reasonable period of time thereafter, the Government shall transmit, in writing, the following information to the surety at the above address:

(i) Name and address of the principal(s); (ii) number of the invitation for bids; (iii) name and address of the department or agency making the award; (iv) date of the award; and (v) total purchase price covered by the award. The phrase, "or within a reasonable period of time thereafter", shall, for practicable purposes, be construed to mean within 15 days following the making of the award. Optional Form 20, Notice to Surety—Deposit Bond—Annual (illustrated at §101-45.4903-20) is a form of written notice available for this purpose.

(3) In the event a bidder whose bid deposit is secured by a deposit bond attempts to withdraw his bid in violation of paragraph 3, General Sale Terms and Conditions, Standard Form 114C, and such bid is determined to be the high bid acceptable to the Government, a formal notice of award shall be issued to inform the bidder of his contractual obligations.

(4) In the event of default by a bidder whose bid deposit has been secured by a deposit bond, a notice of such default should be sent to the bidder (principal) and the surety.

[30 FR 2930, Mar. 6, 1965, as amended at 42 FR 40854, Aug. 12, 1977]

§ 101-45.304-12 Sales to State and local governments.

(a) *General.* (1) State and local governments may purchase Government personal property by:

(i) Negotiation through their State agencies for surplus property as prescribed in this §101-45.304-12;

(ii) Negotiation at fixed prices through their State agencies for surplus property as prescribed in this §101-45.304-12;

(iii) Participation in public sales of Government personal property on a competitive bid basis by having their names maintained on appropriate mailing lists.

(2) No fees or monies will be paid by the Government to State agencies for surplus property for handling these transactions. The State agencies for

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surplus property may impose a fee on purchasers for costs incurred.

(3) When sales are made to State and local governments, the requirements for bid deposits and payments for property prior to removal shall be waived. However, payment must be made within 30 calendar days after purchase. If payment is not made within this time-frame, simple interest may be charged at the rate which has been established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), from the date of first written demand until paid.

(b) *Definitions.* The following terms shall have the meanings set forth in this §101-45.304-12:

(1) *Estimated fair market value.* The selling agency's best estimate of what the property would be sold for if offered for public sale.

(2) *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. This agency will also be responsible for administering the program in their State whereby eligible activities may purchase Government personal property by negotiation or negotiation at fixed prices.

(3) *State and local government.* A State, territory, possession, political subdivision thereof, or tax-supported agency therein.

(4) *Want lists.* Lists of items, submitted by State agencies to selling agencies, of personal property State and local governments desire to purchase by negotiation or fixed prices.

(c) *Submission of State agency requests for property.* State agency requests to selling agencies for purchasing property by negotiation and negotiation at fixed prices shall include, at the minimum, the following information for each type of property requested:

(1) Name, title, address, and telephone number of official person(s) authorized to obligate funds and enter into an agreement to purchase.

(2) Geographical area(s) within which they would be willing to inspect and purchase property;

(3) Complete description of each item desired; i.e., electric typewriter not office equipment, dump truck not vehicular equipment, compact sedan not sedan;

(4) Number of days the request should be maintained on the "want list" pending availability, not to exceed 60 days (selling agencies may extend the expiration date when property is subject to seasonal availability); and

(5) Minimum poorest acceptable condition; i.e., good (usable without repairs), fair (repairable), poor (extensive repairs required).

(d) *Nonwithdrawal.* Property listed in invitation for bids that has been offered for sale to the general public at the time requests are received from State agencies will not be withdrawn from sale under this §101-45.304-12.

(e) *Negotiated sales.* Personal property may be sold by negotiation to State and local governments through their State agencies subject to obtaining such competition as is feasible under the circumstances provided that the estimated fair market value and other satisfactory terms of disposal are obtained (see §101-45.304-2(a)(1)(iv) and §101-46.303(b)(1)). When two or more State agencies have indicated a desire to purchase the same item, quotations should be obtained from such interested parties. When only one State agency wants the property, and no further competition is feasible under the circumstances and all other conditions for negotiation have been met, the sale may be made.

(1) With the exception of items having an estimated fair market value of less than \$100, selling agencies may honor requests by State agencies for State and local governments to purchase property by negotiation prior to offering the property for public sale.

(2) When requested property is available for purchase, the selling agency shall take appropriate action to notify the State agency that the property is available for sale and, when appropriate, consummate the sale in accordance with this §101-45.304-12(e).

(3) When requested property is not presently available for purchase, selling agencies shall:

(i) Establish a "want list" system reflecting State agencies' requests for

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property being offered by negotiated sale.

(ii) Screen property reported for sales action against established "want lists."

(4) When a desired item becomes available for sale, the interested State agency(s) shall be advised of:

(i) The complete item description;

(ii) The condition of the item;

(iii) The item location;

(iv) Full information concerning inspection; and

(v) The estimated fair market value when only one State agency is involved.

(5) A reasonable period of time not to exceed 15 days shall be given the State agency to indicate its desire to purchase the property.

(6) Satisfactory arrangements must be made with State agencies for payment, pickup, handling, and transportation charges, when necessary. (See §101-45.304-12(a)(3) for timeframes for payments.)

(f) Negotiated sales at fixed prices. Property approved to be sold at fixed prices may be offered through State agencies to State and local governments (see §101-45.304-2(b)) at fixed prices prior to public sale.

(1) When property is available at the time of request, the selling agency shall notify the requesting State agency and, when appropriate, consummate the sale in accordance with this §101-45.304-12(f).

(2) When requested property is not presently available for purchase, selling agencies shall:

(i) Establish a "want list" system reflecting State agencies' requests for property being sold at fixed prices, to include approved exchange/sale categories of property (see §101-46.303(b)).

(ii) Screen property to be offered by fixed prices against established "want lists."

(3) When requested property becomes available, interested State agencies shall be advised of:

(i) The complete item description;

(ii) The condition of the item;

(iii) The item location;

(iv) Full information concerning inspection; and

(v) The fixed price established for the item.

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(4) A reasonable period of time not to exceed 15 days shall be given the State agency(s) to indicate its desire to purchase the item. However, when more than one State agency has indicated interest in the item, the sale will be on a "first-come, first-served" basis.

[55 FR 17610, Apr. 26, 1990]

§ 101-45.305 [Reserved]

§ 101-45.306 Contractor inventory.

Except for contractor inventory where retention by the contractor is authorized by the terms of the contract, and after compliance with the applicable requirements of §101-45.310, contractor inventory shall be sold in the same manner as surplus personal property.

[53 FR 16121, May 5, 1988]

§ 101-45.307 Proceeds from sales.

Section 201(c) of the Act, authorizes any executive agency to apply the proceeds from sale of exchange/sale property in whole or in part payment for similar items acquired for replacement purposes. Section 204(a) of the Act requires, except in certain specified instances, that proceeds from sale of surplus personal property shall be covered into the Treasury as miscellaneous receipts. The exceptions are where property sold was originally acquired by funds not appropriated from the general fund of the Treasury, or appropriated therefrom and by law reimbursable from assessments, taxes, or other revenues; and where any contract entered in to by any executive agency or any subcontract under such contract authorizes the proceeds of any sale of contractor inventory to be credited to the price or cost of the work covered by such contract or subcontract. In these cases, the gross proceeds from the sale of such property will be deposited by the selling agency or by contractor or subcontractor to the reimbursable fund or appropriation or paid to the Federal agency accountable for the property. In all other cases, the gross proceeds from the sale of property will be deposited by the selling

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agency to the Treasury as miscellaneous receipts. Therefore, it is essential that the Standard Form 120, Report of Excess Personal Property, or Standard Form 126, Report of Personal Property for Sale, be properly completed to identify the appropriate appropriation or fund symbol, title, and station deposit symbol or station account number, or other manner in which payment is desired.

[31 FR 5001, Mar. 26, 1966]

§ 101-45.308 [Reserved]

§ 101-45.309 Special classes of property.

§ 101-45.309-1 Agricultural commodities.

(a) *Disposal by holding agencies.* Surplus agricultural commodities, surplus foods processed from agricultural commodities, and surplus cotton or woolen goods may be disposed of in accordance with this part 101-45, without reference to the Department of Agriculture, in the following instances:

(1) Where the quantity of such commodity or product in any one location has an acquisition cost not in excess of \$5,000.

(2) Where such commodity or product must be disposed of immediately to prevent spoilage.

(3) Where the quantity to be sold during any month has an acquisition cost not in excess of:

(i) Raw cotton, wheat and other grains, flour, leaf tobacco, and cotton or woolen goods—\$300,000.

(ii) Meat, poultry and poultry products, peanuts, and other fats and oils—\$50,000.

(iii) All other agricultural commodities and foods processed from agricultural commodities—\$25,000.

(b) *Required references to the Department of Agriculture.* With respect to quantities of surplus agricultural commodities, surplus foods processed from agricultural commodities, and surplus cotton or woolen goods, in excess of the amounts specified in this § 101-45.309-1, holding agencies shall obtain from the Agriculture Stabilization and Conservation Service, Department of Agriculture:

(1) A determination, with appropriate instructions, that the commodities or products should be transferred to the Department of Agriculture for disposition as provided by section 203(h) of the Act. Holding agencies accordingly may execute transfers without charge to the Department of Agriculture; or

(2) A statement setting forth the conditions and prices which should be used in the disposition of the commodities or products.

[30 FR 2930, Mar. 6, 1965, as amended at 43 FR 26579, June 21, 1978]

§ 101-45.309-2 Hazardous materials.

In addition to the requirements of this part 101-45, the sale of hazardous materials shall be accomplished in accordance with the provisions of part 101-42.

[57 FR 39137, Aug. 28, 1992]

§ 101-45.309-3 Demilitarization and decontamination.

(a) Dangerous material shall not be disposed of pursuant to this part 101-45 without first being demilitarized or decontaminated when a duly authorized official of the executive agency concerned determines this action to be in the interest of public health, safety, or security. This may include rendering the property innocuous, stripping from it any confidential or secret characteristics, or otherwise making it unfit for further use.

(b) Demilitarization or decontamination of property to be donated to public bodies pursuant to subpart 101-44.7 shall be accomplished in a manner so as to preserve so far as possible any civilian utility or commercial value of the property.

(c) Except for those sales otherwise authorized by § 101-45.309-2 or other statutes, and for specialized sales authorized by the Secretary of Defense, U.S. Munitions List items identified as requiring demilitarization shall not be reported for public sale without first being demilitarized or requiring demilitarization to be a part of the terms and conditions of sale. GSA may refer technical questions on demilitarization to the Department of Defense for advice.

[44 FR 27393, May 10, 1979]

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§ 101-45.309-4 [Reserved]

§ 101-45.309-5 Garbage.

All invitations to bid for removal of garbage from property occupied or controlled by the Federal Government, unless specifically requiring destruction by incineration, shall state that all bidders must comply with basic requirements for sterilization prescribed by the Animal Disease Eradication Division, Bureau of Animal Industry, Department of Agriculture. In the interest of uniformity, the following provision shall be included in all invitations to bid where garbage collected may, under any circumstances, be fed to livestock or poultry:

Prior to award the bidder agrees to furnish a certification from an Animal Disease Eradication Division representative of the U.S. Department of Agriculture, that he possesses adequate and approved garbage sterilization equipment. In the event of an acceptance of his bid by the Government, the bidder warrants that all garbage received under the contract will be sterilized not less than 30 minutes at 212 °F. before being fed to livestock or poultry. The bidder agrees to permit representatives of the Animal Disease Eradication Division of the U.S. Department of Agriculture to make inspections at any time without prior arrangements to determine that the garbage is heat treated in accordance with the provision.

§ 101-45.309-6—101-45.309-7 [Reserved]

§ 101-45.309-8 Bedding and upholstered furniture.

(a) Requirements under State law placed on the purchase and resale of used bedding and upholstered furniture vary from State to State. Some of the restrictions are:

(1) Requirement for sterilization and disinfection of used or second-hand bedding; (2) requirement for an annual license or registration fee as a supply dealer or renovator; (3) option of using stamps or a stamp exemption permit; and (4) requirement for the manufacturer's or vendor's name and address on the tag. Purchasers of Government surplus bedding and upholstered furniture normally are advised to comply with applicable State laws relating to the resale or reuse of such items.

(b) Procedures and instructions are provided herein for selling agencies to

assist State health agencies by advising purchasers of surplus bedding and upholstered furniture to comply with State sanitation standards.

(c) The following terms have the meaning set forth in this § 101-45.309-8:

(1) *Bedding.* Any box spring, comforter, cushion, davenport, hammock pad, lounge, mattress, mattress pad, mattress protector, pillow, quilted pad, sleeping bag, sofa, studio couch, or upholstered spring bed used for sleeping, resting, or reclining purposes.

(2) *Upholstered furniture.* Any article of furniture, wholly or partially stuffed or filled with any concealed material, which is intended for use for sitting, resting, or reclining purposes.

(3) *Filling material.* African fibre, bamboo, cotton, down, excelsior, feathers, felted cotton, fibre, foam rubber, hair, husks, jute, kapok, Louisiana tree moss, sea moss, shoddy, wool, or any other soft material.

(d) Surplus bedding and upholstered furniture which are considered to be detrimental to public health or safety shall be destroyed in accordance with the provisions of subpart 101-45.5.

(e) Surplus bedding and upholstered furniture will be sold in accordance with § 101-45.304 and this § 101-45.309-8.

(f) Sales of surplus bedding material and upholstered furniture shall be processed as follows:

(1) The invitation for bids shall include information advising purchasers of surplus bedding and upholstered furniture to comply with the State laws pertaining to sterilization, resale, and reuse of such items and filling materials as required by State laws.

(2) The invitation for bids shall contain a notice to bidders substantially as follows:

Mattresses, Bedding, or Upholstered Furniture. For any mattresses, bedding, or upholstered furniture offered in this invitation, the purchaser is advised to procure and affix tags, labels, or stamps required by law or otherwise to comply with the State laws pertaining to sterilization, resale, and reuse of such items and filling material as required by State law.

(3) Selling agencies shall be required to provide the State health agency for the State in which a successful bidder maintains its business, with a written notice of such sale to include the name

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and address of the purchaser and the types, quantities, and locations of the articles sold. A copy of the award document or similar notification would serve the purpose.

(4) A list of State health agencies to receive information on sales of surplus bedding and upholstered furniture is provided in §101-45.4808.

[34 FR 8164, May 24, 1969, as amended at 42 FR 40854, Aug. 12, 1977]

§ 101-45.309-9 Gold.

(a) Gold will be sold in accordance with §101-45.304 and this §101-45.309-9.

(b) Sales of gold shall be processed to:

(1) Use the sealed bid method of sale;

(2) Require a 20 percent bid deposit;

(3) Certify all forms of bid deposit and payments; and

(4) Include in the invitation for bids only gold and such other precious and semiprecious materials as may be available for sale at that time.

(c) Each agency generating scrap gold and also having a continuing need for fine gold may arrange for the acceptance of scrap gold for fine gold with a private contractor or the Defense Logistics Agency in accordance with §101-10.1004, Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

[40 FR 33216, Aug. 7, 1975, as amended at 53 FR 16122, May 5, 1988]

§ 101-45.309-10 Safes and locking file cabinets.

Safes and locking file cabinets shall not be accepted for sale in a locked condition, and no safe or locking file cabinet shall be offered for sale pursuant to this part 101-45 unless empty and unlocked. When available, combinations should be taped and/or keys strapped to the outside front of the safe or cabinet.

[41 FR 5097, Feb. 4, 1976]

§ 101-45.309-11 [Reserved]

§ 101-45.309-12 Vehicle reconditioning.

(a) For the purpose of this section, *vehicle reconditioning* means restoring or improving the appearance of any motorized passenger or cargo vehicle designed primarily for highway use that is to be disposed of through sur-

plus or exchange/sale procedures to the general public.

(b) To produce the maximum net proceeds, holding agencies shall determine, prior to sale, the appropriate level of reconditioning commensurate with the estimated fair market value of each vehicle scheduled for sale.

(c) Holding agencies shall arrange for the reconditioning to be accomplished just prior to the dates scheduled for public inspection and sale.

(d) For all motor vehicles above salvage condition or value, the minimum level of reconditioning required is as follows:

(1) *Driver and passenger compartment.*

(i) Remove debris; (ii) vacuum floors and seats; (iii) clean dashboard, instrument panel, armrests, door panels, and rear shelf; (iv) remove Government stickers or decals without marring surface; (v) clean ashtrays and glove compartment; and (vi) wash windows.

(2) *Trunk.* (i) Remove debris; (ii) vacuum; and (iii) position spare tire and tools.

(3) *Engine compartment.* (i) Remove debris; (ii) replenish lubricants and coolant to required levels and replace missing caps/covers; and (iii) charge battery, if necessary.

(4) *Exterior.* (i) Remove Government stickers or decals without marring paint finish; (ii) wash exterior, including glass, door jambs, tires, and wheel rims/covers; and (iii) inflate tires to recommended pressure.

(e) Additional reconditioning of selected motor vehicles should be considered when such action is expected to substantially improve the return on the sale of a vehicle. Generally, a return of \$2.00 for each dollar invested should be estimated to justify additional reconditioning. Additional reconditioning should include some or all of the following:

(1) *Driver and passenger compartment.*

(i) Shampoo seats, dashboard, headliner, door panels, and floor covering; (ii) spray-dye floor carpets and mats; (iii) polish where appropriate; (iv) apply vinyl/rubber reconditioners where appropriate; and (v) replace missing knobs, nameplates, and light lenses and/or bulbs.

(2) *Trunk.* (i) Wash interior surface; and (ii) Spray-dye mats.

(3) *Engine compartment.* (i) Clean major surface areas (air cleaner cover, battery, etc.); (ii) wash or steam clean, when necessary; (iii) replace air and fuel filters; and (iv) make minor adjustments and/or replacements to engine systems (electrical, fuel, cooling, etc.) to ensure that the vehicle will start and idle correctly during inspection by prospective purchasers.

(4) *Exterior.* (i) Rotate tires, including the spare, to ensure that the best tires are displayed on the vehicle. Properly inflate, clean, and apply rubber conditioner or black tire paint to all tires; (ii) wash and blacken wheel splash shields; (iii) apply touch-up paint to nicks and scratches; (iv) wax and polish; (v) replace missing or damaged molding, nameplates, lenses, caps, mirrors, antennas, and wheel covers; (vi) repaint exterior of vehicle to original factory color if scrapes, dings, etc., are excessive; (vii) repair minor body damage; (viii) apply decorative molding and/or striping to add eye appeal; and (ix) obtain State safety and/or emission control inspections, if required.

(f) Reconditioning, when possible, should be accomplished no earlier than the calendar week prior to the scheduled sale date.

(g) Agencies should contact the nearest GSA Federal Supply Service Bureau office for information regarding the availability of reconditioning services.

(h) The expense of reconditioning is the responsibility of the holding agency.

[55 FR 19737, May 11, 1990]

§ 101-45.309-13 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of §101-46.302. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

[57 FR 34253, Aug. 4, 1992]

§ 101-45.310 Antitrust laws.

Whenever an award is proposed to any private interest of personal property with an estimated fair market value of \$3,000,000 or more, or of a patent, process, technique, or invention, irrespective of cost, the selling agency shall promptly notify the Attorney General and the Administrator of General Services, simultaneously, of the proposed disposal and the probable terms and conditions thereof. Upon request by the Attorney General, the agency shall furnish or cause to be furnished to the Attorney General such additional information as the agency may possess concerning the proposed disposition. The Attorney General will advise the agency and the Administrator of General Services within a reasonable time, in no event to exceed 60 days after receipt of such notification, whether, so far as the he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. The agency shall not effect disposition until it has received such advice. The agency shall include in the notification transmitted to the Attorney General and the Administrator of General Services, the following information:

(a) Location and description of property (specifying the tonnage, if scrap).

(b) Proposed sale price of property (explaining the circumstances, if proposed purchaser was not highest bidder).

(c) Acquisition cost of property to Government.

(d) Manner of sale, indicating whether by:

(1) Sealed bid (specifying numbers of purchasers solicited and bids received);

(2) Auction or spot bid (stating how sale was advertised); or

(3) Negotiation (explaining why property was not offered for sale by competitive bid).

(e) Proposed purchaser's name, address, and trade name (if any) under which it is doing business.

(f) If a corporation, give name of State and date of incorporation, and name and address of:

(1) Each holder of 25 percent or more of the corporate stock;

(2) Each subsidiary; and

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(3) Each company under common control with proposed purchaser.

(g) If a partnership, give:

(1) Name and address of each partner;

(2) Other business connections of each partner.

(h) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national.

(i) Estimated dollar sales volume of proposed purchaser (as of latest calendar or fiscal year).

(j) Estimated net worth of proposed purchaser.

(k) Proposed purchaser's intended use of property.

[30 FR 2930, Mar. 6, 1965, as amended at 54 FR 38676, Sept. 20, 1989]

§ 101-45.311 Assistance in controlling unauthorized transport of property.

In order to help alleviate the problems associated with unauthorized transport of property sold by the Government, and to assist the Interstate Commerce Commission in improving control of transportation for hire, the following information shall be made known to all purchasers and shall be included as a "Special Instruction to Bidders" in all formal invitations requesting bids or offers for the sale of personal property:

Attention is invited to the fact that the Interstate Commerce Act makes it unlawful for anyone other than those duly authorized pursuant to that Act to transport this property in interstate commerce for hire. Anyone aiding or abetting in such violation is a principal in committing the offense (49 U.S.C. 301-327 and 18 U.S.C. 2).

§ 101-45.312 [Reserved]

§ 101-45.313 Procedures and forms concerning contingent or other fees for soliciting or securing contracts.

§ 101-45.313-1 Purpose.

For the purpose of promoting uniformity among executive agencies with respect to the required use of the "covenant against contingent fees" and with respect to the procedure for obtaining information concerning contingent or other fees paid by contractors for soliciting and securing Government contracts, the Department of Defense and GSA have developed cooperatively

and agreed upon the required use of the "covenant against contingent fees" and the form, procedure, principles, and standards described in this section.

§ 101-45.313-2 Objectives and methods.

(a) *Objectives.* The requirements of § 101-45.313 have as their objective the prevention of improper influence in connection with the obtaining of Government contracts, the elimination of arrangements which encourage the payment of inequitable and exorbitant fees bearing no reasonable relationship to the services actually performed, and prevention of the reduction in return to the Government which inevitably results therefrom. Improper influence means influence, direct or indirect, which induces or intends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

(b) *Methods.* The methods used to achieve the above objectives stated in paragraph (a) of this section are the requirement for disclosure of the details of arrangements under which agents represent concerns in obtaining Government contracts, and the prohibiting, by use of the covenant against contingent fees, of certain types of contractor-agent arrangements. The Criminal Code will apply in any case involving actual criminal conduct.

§ 101-45.313-3 Representation and covenant.

(a) *Representation.* Except as provided in § 101-45.313-7, each selling agency shall inquire of and secure a written representation from prospective purchasers as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective purchaser) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the sales contracting officer. The form of such representation shall be that contained in Standard Form 114, Sale of Government Property—Bid and Award (illustrated in § 101-45.4901-114).

(b) *Covenant*. Selling agencies shall include in every negotiated or advertised contract for the sale of Government-owned personal property the "covenant against contingent fees" as contained in the Standard Form 114C, General Sale Terms and Conditions (illustrated in § 101-45.4901-114C).

[42 FR 40854, Aug. 12, 1977]

§ 101-45.313-4 General principles and standards applicable to the covenant.

(a) *Use of principles and standards*. The principles and standards set forth in this § 101-45.313-4 are intended to be used as a guide in the negotiation, awarding, administration, or enforcement of Government contracts.

(b) *Contingent character of the fee*. Any fee whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

(c) *Exceptions to the prohibition*. There are excepted from the prohibition of the covenant "bona fide employees" and "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

(d) *Bona fide employee*. (1) The term *bona fide employee*, for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work.

NOTE: It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in § 101-45.313-4(e)(2), except (iv), shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

(2) The hiring must contemplate some continuity and it may not be re-

lated only to the obtaining of one or more specific Government contracts.

(3) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

(4) A person may be a bona fide employee whether his compensation is on a fixed salary basis, or when customary in the trade, on a percentage, commission, or other contingent basis or a combination of the foregoing.

(e) *Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business*. (1) An agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(i) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or

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subcontractors for performance of the contract.

(ii) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(iii) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agency relationships where a continuing relationship is contemplated by the parties.

(iv) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(v) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government, as well as regular commercial sales to non-Government activities, is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

(f) *Fees for "information."* Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualified under the exception as a bona fide em-

ployee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

§ 101-45.313-5 Standard Form 119, Contractor's Statement of Contingent or Other Fees.

Pursuant to the Act and in furtherance of the purpose and objectives stated in sections 1 and 3 thereof, Standard Form 119, shall be used in accordance with the provisions of this § 101-45.313.

§ 101-45.313-6 Use of Standard Form 119, Contractor's Statement of Contingent or Other Fees.

(a) *Required use.* Except as provided in § 101-45.313-7, Standard Form 119 shall be used, without deviation, whenever either part of the inquiry provided for in § 101-45.313-3(a) with respect to contingent fees is answered in the affirmative. The form shall be used also, without deviation, in any other case where an agency desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors.

(b) *Statement in lieu of form.* Any bidder who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid with, or submit in connection with the proposed contract, a signed statement indicating when such completed form was previously furnished, identifying by number the previous invitation or contract in connection with which such form was submitted; and representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

§ 101-45.313-7 Exceptions.

The inquiry and agreement specified in § 101-45.313-3(a) need not be made and submission of Standard Form 119 need not be requested in connection with any of the following:

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(a) Any advertised contract in which the aggregate amount involved does not exceed \$25,000.

(b) Any negotiated contract in which the aggregate amount involved does not exceed \$5,000.

(c) Contracts to be made in foreign countries.

(d) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary, Under Secretary, or Assistant Secretary of a military department. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)

[30 FR 2930, Mar. 6, 1965, as amended at 35 FR 12121, July 29, 1970]

§ 101-45.313-8 Enforcement.

(a) *Failure or refusal to furnish representation and agreement.* Each selling agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as prescribed in § 101-45.313-3.

(1) If the indicated successful bidder makes such representation in the negative such representation may be accepted and award made or offer accepted in accordance with established procedure.

(2) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract unless the head of the executive agency (including for this purpose, any military department) concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(3) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement, after such opportunity has been afforded, shall require rejection of the bid or offer.

(b) *Failure or refusal to furnish Standard Form 119.* If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 101-45.313-6, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(2) If the contract has been awarded or the offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.

(c) *Misrepresentations or violations of the covenant against contingent fees.* In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(2) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms, that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(3) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.

(4) Determine whether the case should be referred to the Department

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of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.

§ 101-45.313-9 Preservation of records.

Selling agencies shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119, together with a record of any other pertinent data, including data as to action taken.

§ 101-45.314 Federal excise taxes.

Federal manufacturers' and retailers' excise taxes are not applicable to the sale or other disposal by the Government of personal property or the disposal of contractor inventory. Federal manufacturers' excise taxes do not apply to subsequent sales, including uses, by purchasers of Government property and contractor inventory. Federal retailers' excise taxes apply to subsequent sales, but not to subsequent uses by the purchasers unless the subsequent sale is made for resale and a certificate of resale is obtained. The foregoing does not apply to gasoline, and holding agencies shall make appropriate arrangements with the Internal Revenue Service with respect to the disposal thereof. Questions relating to the applicability of Federal excise taxes arising from the disposal of property or contractor inventory should be referred to the Internal Revenue Service.

§ 101-45.315 Equal Opportunity clause in contracts.

The Equal Opportunity clause prescribed by Executive Order 11246 of September 24, 1965 (30 FR 12319, 12935) (as amended by Executive Order 11375 of October 13, 1967 (32 FR 14303)), as set forth in §101-45.4807, shall be included in all contracts for the sale of personal property when the contract exceeds \$10,000, and an appreciable amount of work by the purchaser required by or for the Government is involved. When a sale is planned and the probability exists that the foregoing conditions will be present, the Equal Opportunity clause shall be included in the contract

provisions of the invitation as a special condition of sale.

[42 FR 40854, Aug. 12, 1977]

§ 101-45.316 [Reserved]

§ 101-45.317 Noncollusive bids and proposals.

(a) Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, contains the certification of independent price determination. This condition is applicable to all invitations for bids and requests for proposals or quotations providing for the sale of personal property, except fixed price sale under section 203(e)(5) of the Act.

(b) The authority to make determinations described in paragraph (d) of Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, shall not be delegated to an official below the level of the head of a selling activity of the agency.

(c) Where a certification is suspected of being false or there is an indication of collusion, the matter shall be referred to the Department of Justice as provided in §101-45.107-1.

[31 FR 9542, July 14, 1966, as amended at 35 FR 12121, July 29, 1970]

§ 101-45.318 Identical bids.

In addition to complying with the requirements of §§101-45.316 and 101-45.317, when an invitation for bids for the sale of personal property results in the submission of identical bids, consideration shall be given to whether adequate prime competition was obtained. Whether there is adequate price competition for a given sale is a matter of judgment to be based on the circumstances of the sale. If the circumstances do not permit a reasonable determination that the price competition was adequate, the sale should be resolicited.

[36 FR 12297, June 30, 1971]

Subpart 101-45.4—Contract Disputes

SOURCE: 59 FR 60561, Nov. 25, 1994, unless otherwise noted.

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§ 101-45.400 Scope of subpart.

This subpart provides guidance regarding contract claims and appeals relating to contracts for the sale of personal property under the Contract Disputes Act of 1978, as amended, (41 U.S.C. 601-613). Contracting agencies should seek guidance from the Contract Disputes Act (the Act) and Federal Acquisition Regulation (FAR) 48 CFR Part 33. The Act applies to all contracts entered into by executive agencies for the sale of personal property, except the following:

(a) Contracts with a foreign government or agency of that government when the agency head determines that application of the Act to the contract would not be in the public interest,

(b) Contracts with an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest, and

(c) Contracts of the Tennessee Valley Authority unless such contracts contain a disputes clause requiring dispute resolution via an administrative process.

§ 101-45.401 The disputes clause.

The disputes clause contained at 48 CFR 52.233-1 must be included in all solicitations and contracts for the sale of personal property unless the exceptions in § 101-45.400 apply.

§ 101-45.402 Alternative disputes resolution.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Agencies are encouraged to use alternative dispute resolution (ADR) procedures to the maximum extent practicable in accordance with the authority and the requirements of the Administrative Disputes Resolution Act (Pub. L. 101-522) and agency policies.

Subpart 101-45.5 [Reserved]

Subpart 101-45.6—Debarred, Suspended, and Ineligible Contractors

§ 101-45.600 Scope of subpart.

This subpart prescribes policies and procedures governing the debarment or suspension of contractors for contracts involving the sale by the Government of personal property.

[50 FR 41145, Oct. 9, 1985]

§ 101-45.601 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts only with responsible contractors, as defined by Federal Acquisition Regulation (FAR) 9.104-1.

(b) The policies, procedures, and requirements of FAR subpart 9.4 are incorporated by reference and made applicable to contracts for, and to contractors who engage in the purchase of Federal personal property.

(c) The debarment or suspension of a contractor from the purchase of Federal personal property has Governmentwide effect and precludes any agency from entering into a contract for purchase of personal property with that contractor unless the agency's head or a designee responsible for the disposal action determines that there is a compelling reason for such action. (See FAR 9.405(a).)

(d) When the debarring/suspending official has authority to debar/suspend contractors from both contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6 and acquisition contracts pursuant to FAR 9.4, that official shall consider simultaneously debarring/suspending the contractor from the purchase of Federal personal property and the award of acquisition contracts. When debarring/suspending a contractor from the purchase of Federal personal property and the award for acquisition contracts, the debarment/suspension notice shall so indicate and the appropriate FPMR and FAR citations shall be included.

[50 FR 41145, Oct. 9, 1985]

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§ 101-45.602 Listing debarred or suspended contractors.

(a) Contractors which have been debarred or suspended by agency debarring/suspending officials will be included on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (FAR 9.404) in accordance with the procedures established at FAR 9.404.

(b) Agencies shall establish procedures for the use of the consolidated list to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in FAR 9.405(a).

[50 FR 41146, Oct. 9, 1985]

Subpart 101-45.7—Submission of Bids

SOURCE: 37 FR 24666, Nov. 18, 1972, unless otherwise noted.

§ 101-45.700 Scope of subpart.

This subpart prescribes policies and methods relating to bids submitted in advertised sales of Government personal property and includes the treatment of late bids received in connection with such sales.

§ 101-45.701 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic or telephonic bids shall not be considered unless otherwise provided in the invitation for bids. (See § 101-45.4901-114C, item No. 3 entitled "Consideration of Bids.") The term "telegraphic bids" includes bids submitted by telegram or by mailgram. The following statement should be included in all invitations for bids: "The terms 'telegraphic bid' and 'telegraphic notice' include bids and notices by telegram or by mailgram."

(c) Bids shall be filled out, executed, and submitted in accordance with the instructions contained in the invita-

tion for bids. If a bidder uses his own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation for bids and (2) award on the bid would result in a binding contract, the terms and conditions of the invitation.

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11820, Mar. 22, 1978]

§ 101-45.702 Time of bid submission.

Bids shall be submitted so as to be received by the contracting officer not later than the exact time set for opening of bids. When telegraphic bids are authorized and such a bid is received by telephone from the receiving telegraph office not later than the time set for opening of bids, it shall be considered only if the bid is confirmed by receipt of a copy of the telegram or mailgram which formed the basis for the telephone call.

[43 FR 11821, Mar. 22, 1978]

§ 101-45.703 Late bids.

§ 101-45.703-1 General.

Bids received by the contracting officer after the exact time set for bid opening are late bids. (See §§ 101-45.4904-1-114C-1, 101-45.4901-114C-2, and 101-45.4901-114C-3 for item entitled "Consideration of late Bids, Modifications, or Withdrawals.") Late bids shall not be considered for award except as authorized in this § 101-45.703.

[42 FR 40854, Aug. 12, 1977]

§ 101-45.703-2 Consideration for award.

(a) A late bid shall be considered for award only:

(1) In the instance of sealed bid sales, if the bid submitted by mail was received by the contracting officer prior to award, was mailed and, in fact, delivered to the address specified in the invitation in sufficient time to have been received by the contracting officer by the time and date set forth in the invitation for opening of bids, and except for delay attributable to personnel of the sales office or their designees would have been received on time; or

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(2) In the instance of spot bid and auction sales, if the bid submitted by mail (where authorized) was received by the contracting officer after the time and date set forth in the invitation for receipt of bids but before the time set for the start of the sale, and was mailed and, in fact, delivered to the address specified in the invitation in sufficient time to have been received by the contracting officer by the time and date set forth in the invitation for receipt of bids, and except for delay attributable to personnel of the sales office or their designees would have been received on time.

(b) The only evidence acceptable to establish timely receipt of bids at the address designated in the invitation for bids is documentary evidence of receipt at such address within the control of the selling agency. Such evidence could be a date or time stamp, or a log entry.

§ 101-45.703-3 Telegraphic bids.

A late bid submitted by telegraph (where authorized) received before award shall not be considered for award regardless of the cause of the late receipt, including delays caused by the telegraph company, except for a telegraphic bid delayed solely because of mishandling on the part of the Government in its transmittal to the office designated in the invitation for bids for the receipt of bids.

§ 101-45.703-4 Handcarried bids.

A late handcarried bid or any other late bid not submitted by mail, telegram, or mailgram shall not be considered for award.

[43 FR 11821, Mar. 22, 1978]

§ 101-45.703-5 Disposition of late bids.

A late bid which is not for consideration shall be returned to the bidder as promptly as possible (unless other disposition is requested or agreed to by the bidder). However, an unidentified late bid may be opened solely for the purpose of identification and then only by the contracting officer or his authorized representative. Late bids opened for identification purposes or by mistake shall be resealed in the envelope. The contracting officer or his authorized representative shall immediately

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write on the envelope his signature and position, date and time opened, invitation for bids number, and an explanation of the opening. No information contained therein shall be disclosed to anyone.

§ 101-45.703-6 Records.

To the extent available, the following information shall be included in the contract case files with respect to each late bid:

- (a) A statement of the date and hour of mailing or filing;
- (b) A statement of the date and hour of receipt;
- (c) A mechanical reproduction of the envelope, or other covering, if the late bid was returned, in lieu of paragraphs (a) and (b) of this section;
- (d) The determination of whether the late bid was considered for award, with supporting facts;
- (e) A statement of the disposition of the late bid; and
- (f) The envelope, or other covering, if the late bid was considered for award.

§ 101-45.704 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received by the contracting officer not later than the exact time set for opening of bids (in the instance of sealed bid sales) or not later than the exact time set for the receipt of mailed-in or telegraphic bids (in the instance of spot bid and auction sales where such bids are authorized). A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered only if the message is confirmed by receipt of a copy of the written telegram or mailgram which formed the basis for the telephone call. Modifications received by telegram or mailgram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official who shall write thereon the date and time of receipt and by whom received, the invitation for bids, number, and his signature. No information contained therein shall be disclosed before the time set for bid opening or for the start of the sale. The term *telegraphic notice*

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includes modifications and withdrawals submitted by telegram or mailgram. The following statement should be included in all invitations for bids:

The terms *telegraphic bid* and *telegraphic notice* include bids and notices by telegram or by mailgram.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for the opening of bids (in the instance of sealed bid sales) or the exact time set for the start of the sale (in the instance of spot bid and auction sales).

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11821, Mar. 22, 1978]

§ 101-45.705 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received by the contracting officer after the exact time set for bid opening (in sealed bid sales) or after the exact time set for the receipt of bids (in spot bid or auction sales) are "late modifications" and "late withdrawals", respectively. A late modification or late withdrawal shall be subject to the provisions of § 101-45.703. However, a late modification of the otherwise successful bid shall be opened at any time it is received; and if in the judgment of the contracting officer it makes the terms of the bid more favorable to the Government, it shall be considered.

(b) Mailed-in, telegraphic, and mailgram modifications or withdrawals which are received by the contracting officer after the time set for the start of a spot bid or auction sale shall not be considered, regardless of the cause of delay.

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11821, Mar. 22, 1978]

Subpart 101-45.8—Mistakes in Bids

SOURCE: 32 FR 16270, Nov. 29, 1967, unless otherwise noted.

§ 101-45.800 Scope of subpart.

This subpart prescribes the policies and methods governing the treatment by executive agencies of mistakes in bids by bidders in sales of personal property. The authorities prescribed herein are not intended to nullify previous authorities granted by the Comptroller General.

§ 101-45.801 General.

After the opening of bids, sales contracting officers shall examine all bids for mistakes. Where the sales contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this subpart 101-45.8. Such actions shall be taken prior to award.

§ 101-45.802 Apparent clerical mistakes.

Any clerical mistake apparent on the face of a bid may be corrected by the sales contracting officer prior to award if the sales contracting officer has first obtained from the bidder verification of the bid actually intended. An example of such an apparent mistake is an error in placing the decimal point (e.g., a bidder bids \$10 each on 10 units, but shows an extended price of \$1,000 or a bidder bids \$0.50 per lb. for 1,000 lbs. but shows an extended price of \$50). Any correction made pursuant to this § 101-45.802 shall be reflected in the award document, if an award is made on the corrected bid.

§ 101-45.803 Other mistakes disclosed before award.

(a) Heads of executive agencies are authorized (with power of redelegation as provided in §§ 101-45.803(b) and 101-45.804(d)), in order to minimize delay in contract awards, to make the administrative determinations described in this § 101-45.803 in connection with mistakes in bids alleged after opening of bids and before award. The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit

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correction of bids to make them responsive. This authority is in addition to that in §101-45.802 or that which may be otherwise available.

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake.

(2) However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid as submitted and as corrected is the highest received, a determination may be made to correct the bid and not permit its withdrawal.

(3) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if the correction would result in displacing one or more higher acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(4) If the evidence does not warrant a determination under paragraph (a)(1), (2), or (3) of this section, a determination may be made that a bidder may neither withdraw nor correct his bid.

(b) Heads of executive agencies may delegate to one central authority in their agencies, without power of redelegation, authority to make the determinations under paragraphs (a) (2), (3), and (4) of this §101-45.803. The authority to make determinations to permit withdrawal of bids as provided in paragraphs (a) (1) and (3) of this section may be delegated, without power of redelegation, to any sales activity having legal counsel available.

(c) Each proposed determination shall be approved by the agency's General Counsel, Deputy or Associate General Counsel, and Assistant General Counsel, or other comparable legal officer. However, authority to approve de-

terminations to permit withdrawal of bids pursuant to paragraphs (a) (1) and (3) of this section may be delegated to the legal counsel of sales activities.

(d) Suspected or alleged mistakes shall be processed as follows:

(1) Whenever the sales contracting officer suspects that a mistake may have been made in a bid, he shall immediately request the bidder to verify the bid. Such request shall inform the bidder of the basis for suspecting a mistake and shall advise the bidder that if a mistake is alleged, to support his allegation by statements concerning the alleged mistake and by all pertinent evidence; such as the bidder's file copy of the bid, his original worksheets and other data used in preparing the bid, and any other evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended. If the time for acceptance of bids is likely to expire before a decision can be made, the sales contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time and a decision cannot be reached before expiration of the time for acceptance, even if handled by telegraph or telephone as provided in §101-45.803(d)(4), the bid shall be considered as originally submitted.

(2) If the bidder verifies his bid, the sales contracting officer shall consider it as originally submitted.

(3) Where the bidder furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the bidder.

(ii) A copy of the bid and the invitation for bids.

(iii) An abstract or record of the bids received.

(iv) A written statement by the sales contracting officer setting forth—

(a) The expiration date of the bid in question and of the other bids submitted;

(b) Specific information as to how and when the mistake was alleged;

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(c) Most recent contract price for a like item(s) involved, when sold, in what quantity, relative condition, etc.;

(d) A summary of the evidence submitted by the bidder;

(e) Any additional evidence considered pertinent, including copies of all correspondence between the sales contracting officer and the bidder concerning the alleged mistake; and

(f) The course of action with respect to the bid that the sales contracting officer considers proper on the basis of the evidence.

(4) When time is of the essence, because of the expiration of bids or otherwise, the sales contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, however, sales contracting officers will not refer mistake in bid cases to the designated authority by telegraph or telephone, particularly when the determinations set forth in paragraphs (a)(2) and (3) of this §101-45.803 are applicable, since actual examination of the evidence is generally necessary to determine the proper action to be taken.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the sales contracting officer shall consider the bid as submitted unless there are indications of error so clear as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, in which case it may be rejected. This action will be cleared through counsel serving the cognizant sales contracting officer. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) Nothing contained in this §101-45.803 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any bidder of his right to have the matter determined by the Comptroller General should he so request. All doubtful cases shall be submitted to the Comptroller General for advance decision in accordance with agency procedures.

(f) Each agency shall maintain records of all administrative deter-

minations made in accordance with this §101-45.803, the facts involved, and the action taken in each case. Copies of all such administrative determinations shall be included in the case file. Where a contract is awarded, the General Accounting Office copy of the contract, whenever filed, shall be accompanied by a signed copy of any related determination.

[32 FR 16270, Nov. 29, 1967, as amended at 42 FR 31455, June 21, 1977; 42 FR 34881, July 7, 1977]

§ 101-45.804 Mistakes disclosed after award.

(a) When a mistake in bid is not discovered until after the award, the mistake may be corrected by supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract.

(b) In addition to the cases contemplated in §101-45.804(a), heads of executive agencies are authorized, under the circumstances set forth in §101-45.804(c), to make the administrative determinations described below in connection with mistakes in bids alleged or disclosed after award. This authority is in addition to that provided by Public Law 85-804 (50 U.S.C. 1431-1435) or that which may be otherwise available.

(1) A contract may be rescinded in its entirety where the original total contract amount does not exceed \$10,000.

(2) A contract, irrespective of amount, may be reformed (i) by deleting the item or items involved in the mistake where the deletion does not reduce the contract amount by more than \$10,000; or (ii) by decreasing the price where the resultant decrease in price does not exceed \$10,000 and the reformed contract price is not less than that of the otherwise next high bid under the original invitation for bids.

(c) Determinations under §101-45.804(b) may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the purchaser was so apparent as to have charged the sales contracting officer with notice of the probability of the

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mistake. If the evidence does not warrant a determination under paragraph (b)(1) or (2) of this §101-45.804, determination may be made that no change shall be made in the contract as awarded.

(d) Heads of executive agencies may delegate to one central authority in their agencies, without power of redelegation, authority to make the determinations under this §101-45.804.

(e) Each proposed determination shall be approved by the agency's General Counsel, Deputy or Associate General Counsel, an Assistant General Counsel, or other comparable legal officer.

(f) Mistakes disclosed after award shall be processed as follows:

(1) Whenever a mistake in bid is alleged or disclosed after award, the sales contracting officer shall advise the purchaser to support the alleged error by written statements and by all pertinent evidence, such as the purchaser's file copy of the bid, his original worksheets and other data used in preparing the bid, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) Where the purchaser furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the purchaser.

(ii) A copy of the contract, including a copy of the bid.

(iii) An abstract or record of the bids received.

(iv) A written statement by the sales contracting officer setting forth—

(a) Specific information as to how and when the mistake was alleged or disclosed;

(b) A summary of the evidence submitted by the purchaser;

(c) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(d) Most recent contract price for a like item(s) involved, when sold, in what quantity, relative condition, etc.;

(e) Any additional evidence considered pertinent, including copies of all relevant correspondence between the sales contracting officer and the purchaser concerning the alleged mistake;

(f) The course of action with respect to the alleged mistake that the sales contracting officer considers proper on the basis of the evidence; and

(g) The status of performance and payments under the contract, including contemplated performance and payments.

(g) Nothing contained in this §101-45.804 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any purchaser of his right to have the matter determined by the Comptroller General should he so request.

(h) Each agency shall maintain records of all administrative determinations made in accordance with this §101-45.804, the facts involved, and the action taken in each case. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(i) Where administrative determination is precluded by the limitations set forth in this section, the matter will be submitted to the Comptroller General for decision in accordance with agency procedures.

(j) Nothing contained in this §101-45.804 prevents an agency from submitting doubtful cases to the Comptroller General.

[32 FR 16270, Nov. 29, 1967, as amended at 40 FR 59439, Dec. 24, 1975]

§ 101-45.805 Mistakes disclosed after award in negotiated sales.

When a mistake in a purchaser's quotation is not discovered until after award, the authority to correct mistakes contained in this subpart 101-45.8 may be utilized in accordance with the limitations and procedures set forth herein.

[35 FR 12121, July 29, 1970]

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Subpart 101-45.9—Abandonment or Destruction of Personal Property

SOURCE: 65 FR 63549, Oct. 24, 2000, unless otherwise noted.

§ 101-45.900 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For information on the abandonment or destruction of personal property previously contained in this subpart, see 41 CFR part 102-36 (§§ 102-36.305 through 102-36.330).

Subpart 101-45.10—Recovery of Precious Metals

SOURCE: 53 FR 16123, May 5, 1988, unless otherwise noted.

§ 101-45.1000 Scope of subpart.

This subpart prescribes the policy and procedures for recovery of precious metals from articles of excess and surplus personal property.

§ 101-45.1001 General.

GSA is responsible for the initiation and development of Government-wide precious metals recovery programs, and for the issuance and administration of applicable contracts, except those issued and administered by DOD for precious metals recovery and refinement operations. Situations will occur where, in terms of economy, efficiency, and environmental quality, it is in the best interest of the Government to recover precious metals from articles of excess and surplus personal property instead of using other methods of disposal. GSA will determine when Government-wide recovery is appropriate on the basis of an evaluation of the supply-demand factor, the price of the commodity, the cost of recovering the precious metal, and applicable guidelines or regulations on pollution control.

§ 101-45.1002 Agency responsibilities.

Heads of executive agencies are responsible for establishing, maintaining, and pursuing a program for recovery of precious metals. The provisions of this § 101-45.1002 provide guidance

with respect to surveys, assignments of program monitors, and internal audits. Precious metals that may be designated for recovery include gold, silver, and metals in the platinum family. Examples of silver bearing scrap and waste include used photographic fixing (hypo) solution, photographic and X-ray film, silver alloys, and dental scrap. Other examples of precious metals bearing materials include electronic scrap, ADPE, welding and brazing wire, anodes, and batteries. Certain strategic and critical materials may also be designated for recovery.

[62 FR 34013, June 24, 1997]

§ 101-45.1002-1 Precious metals recovery surveys.

Each agency shall identify those activities that generate silver or other precious metals (including used hypo solution, scrap film, and other precious metals bearing materials). Activities identified as generating precious metals bearing materials shall be surveyed to obtain information regarding actual or potential precious metals recovery. Estimates of potential recovery may be obtained through use of testing papers for hypo solution; various charts, tables, and scales for scrap film, assays of samples of precious metals bearing materials; or other acceptable methods of estimating potential precious metals contents.

§ 101-45.1002-2 [Reserved]

§ 101-45.1002-3 Precious metals recovery program monitor.

Each agency should designate an individual to monitor its precious metals recovery program. Responsibilities of the precious metals monitor should include conducting and initiating surveys; implementing and improving recovery procedures; and monitoring the agency's recovery program.

[62 FR 34013, June 24, 1997]

§ 101-45.1002-4 Internal audits.

Each agency should require periodic internal audits of its precious metals recovery program. The internal audits should be of such frequency and scope as to provide for proper control over the recovery, storage, and disposition

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of precious metals bearing materials. Primary elements for review should include document control and record maintenance; storage facilities and security controls; methods of recovery and equipment operation; and procedures for recovering precious metals through service contracts or disposal through sales contracts.

§ 101-45.1003 Recovery of silver from precious metals bearing materials.

(a) Each agency should recover silver regardless of the quantity of used hypo solution or scrap film generated. Installations of a silver recovery unit consistent with the quantity of used hypo solution generated or storage of used hypo solution or scrap film until a processible quantity is obtained are two alternatives. If an activity generates small quantities of hypo solution and tests show that there is a minimal amount of silver per gallon of solution, arrangements should be made, to the extent feasible, with another activity in the area which is using a recovery unit to receive and process the hypo solution. When the actual amount of silver recovered is substantially less than the estimated amount potentially recoverable, agencies should fully document the reason for the substantial difference.

(b) When recovery by an agency is not economically feasible and consolidation with other activities is not practical, the regional GSA Federal Supply Service Bureau serving the area or the Defense Logistics Agency (DLA) (in accordance with § 101-45.1004) should be contacted for assistance. If it is determined that silver recovery cannot be accomplished economically by Government-owned equipment or by a commercial recovery contractor, the hypo solution, scrap film, or other silver bearing materials should be disposed of in accordance with part 101-45 in an environmentally acceptable manner.

§ 101-45.1003-1 Guidelines for the recovery of silver from used hypo solution and scrap film.

The basic factors that determine the potential quantity of recoverable silver are: The amount of used hypo solution or scrap film generated; the amount and type of film processed; and the

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physical layout and available recovery equipment of the photographic facility. Since these factors may vary for each facility, a single method of recovery cannot be prescribed.

§ 101-45.1003-2 Recovery of silver from used hypo solution.

Used hypo solution should be processed to recover the maximum amount of silver from the solution, consistent with overall economic feasibility and environmental considerations. Recovery can be effected either by Government-owned equipment or through use of commercial recovery contracts. Various types and sizes of equipment using metallic replacement or electrolytic methods of recovery are available which permit economic silver recovery from both large and small quantities of used hypo solution.

§ 101-45.1003-3 Recovery of silver from scrap film.

Scrap film, the silver content of which varies according to the type of film and the degree of exposure, is a major source of recovered silver. One method of recovering silver from scrap film is by burning the film in specially designed and approved incinerators. The burning reduces the film to high content silver bearing ash which can be economically processed to produce fine silver. Recovery onsite by controlled burning should only be accomplished at those activities or installations where approved facilities exist and the local code on burning permits it. A common alternative method of recovery is through periodic disposal of accumulated scrap film by sale in accordance with part 101-45.

§ 101-45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Civil agencies may use the DOD Precious Metals Recovery Program as prescribed in § 101-45.1004.

§ 101-45.1004-1 Civil agency participation in the DOD Precious Metals Recovery Program.

(a) Civil agencies wishing to participate in the DOD precious metals recovery system should contact the Manager, DOD Precious Metals Recovery

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Program, Attention: DLA-MMLC, Fort Belvoir, VA 22060, for further information regarding the following plans:

(1) *Plan I.* An appraisal or survey of the agency's precious metals recovery potential and a recommendation as to appropriate recovery techniques and equipment;

(2) *Plan II.* DLA acceptance of photographic wastes, excess, and other precious metals bearing materials at Defense Reutilization and Marketing Offices (DRMO's) or other disposition sites;

(3) *Plan III.* Disposition and shipping instructions for recovered precious metals bearing materials not authorized for acceptance at local DRMO's;

(4) *Plan IV.* Assistance and recommendations as needed in the administration and operation of the agency's precious metals recovery program including an appraisal or survey of recovery potential; the furnishing of recovery and other supporting equipment; and the prescribing of procedures for the security and disposition of precious metals bearing materials. This plan will, in most cases, require a formal Memorandum of Understanding between DLA and the participating agency.

(b) Services addressed in the above plans will be provided to the extent that DLA resources permit.

(c) DLA will provide recovered fine precious metals to participating agencies (those generating precious metals bearing scrap for the DOD Precious Metals Recovery Program) for use as Government Furnished Materials (GFM) or other authorized internal uses in accordance with §101-45.1004-2.

[53 FR 16123, May 5, 1988, as amended at 62 FR 34013, June 24, 1997]

§ 101-45.1004-2 Use of DOD-recovered fine precious metals.

To determine the need for recovered fine precious metals as GFM to reduce new procurement costs, each agency shall review procurements for which fine precious metals will be required by a contractor. Each agency having requirements for recovered fine precious metals as GFM or for other authorized internal uses should submit a request to the Commander, Defense Industrial Supply Center (DISC), Attention:

DISC-OIBA/YC, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5096. Recovered fine precious metals will be provided to agencies for use as GFM or for other authorized internal uses on a "as-needed-when-available" basis. There is a nominal charge for the recovered fine precious metals. Normally, the amount of recovered fine precious metals authorized for issue to individual civil agencies will not be restricted, except in those instances when the precious metals involved are not available in sufficient quantities to satisfy all requirements. No minimum ordering quantity is prescribed. Requiring activities should contact DISC to assure asset availability prior to the requisitioning of any quantity of precious metal other than silver. Advance inquiries for silver should be made only when requirements exceed 5,000 troy ounces.

Subparts 101-45.11—101-45.46 [Reserved]

Subpart 101-45.47—Reports

§ 101-45.4700 Scope of subpart.

This subpart prescribes the requirements for reporting to GSA on matters pertaining to the general subject area of disposal of personal property.

[42 FR 56027, Oct. 20, 1977]

§ 101-45.4701 [Reserved]

§ 101-45.4702 Negotiated sales reports.

An annual report listing and describing any negotiated disposals of surplus personal property having an estimated fair market value of more than \$5,000, other than disposals for which an explanatory statement has been transmitted (see §101-45.304-2(c)), shall be submitted by each Federal agency to GSA within 60 calendar days after the close of each fiscal year.

[54 FR 38676, Sept. 20, 1989]

Subpart 101-45.48—Exhibits

§ 101-45.4800 Scope of subpart.

This subpart 101-45.48 exhibits information referenced in the text of part

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101-45 that is not suitable for inclusion elsewhere in that part.

[42 FR 40855, Aug. 12, 1977]

§ 101-45.4801 Instructions for the preparation of advance notice to the Department of Commerce.

1. *Transmittal of notice.* Section 101-45.304-7 provides that when the acquisition cost of personal property to be sold at one time at one place is \$250,000 or more, the disposal agency shall cause a notice of each such proposed sale to be transmitted to the U.S. Department of Commerce, room 1300, 433 West Van Buren Street, Chicago, Ill. 60607.

The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing direct from the text so transmitted without editing or condensing.

These notices are for use of the Department of Commerce in making regular publication of a synopsis of principal proposed sales of Government personal property.

2. *Format and content of notice.*

a. *Information to be furnished.* The following information shall be provided in the order listed so as to preserve the format of the Department of Commerce publication: the name of the office which will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable; the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property.

b. *Detailed requirements.* In preparing the notice to the Department of Commerce, the utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. While the various kinds of property to be sold should be stated concisely, the names of important items should not be omitted. The following example is provided as a guide, both as to the order in which the information should be given, the extent to which information should be condensed or expanded, depending upon the size of the sale, and the format which, if followed, will facilitate publication without editing. Attention is specially invited to the double spacing the "hanging" indention, and the length of the

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line which should be approximately 65, but not to exceed 69, character spaces.

EXAMPLE

General Services Administration, Region 8, Business Service Center, Building 41, Denver Federal Center, Denver, Colo.

Scrapers, Graders, Street Sweeper, Crawler Tractor, Air Compressors, Power Units, Cement Mixer—Total acquisition cost \$269,850. Invitation No. 8 UPS-65-41—Bid opening 11-30-65. Sealed bid, location above.

Motor vehicles, passenger cars and 3/4-ton to 5-ton trucks, materials handling equipment, fork lift trucks and warehouse tractors, jack lift trucks, warehouse trailers, platform and box trucks, hand tools, hardware, plumbing equipment, special industry machinery, office machines, furniture, rope, cable chair and fittings, miscellaneous gasoline and water hose; burlap bags, barrier paper, pack saddles, tape and webbing, lanterns, spare parts for compressors, tractors, shovels, bulldozers, cranes, welding equipment, motor vehicles, air hammer diesel and gasoline engines—Total estimated acquisition cost \$6 million; Sale No. 8UPS-A-65-44. Sale starts 12-15-65. Auction sale, location above.

[30 FR 2930, Mar. 6, 1965; 30 FR 3384, Mar. 13, 1965. Redesignated at 42 FR 40855, Aug. 12, 1977]

§ 101-45.4802 Sample format—irrevocable letter of credit.

(Name and address of bank issuing letter of credit)
(Date)
(Number of letter of credit and reference)
Treasurer of the United States
Washington, DC 20220

Dear Madam: We hereby establish our irrevocable letter of credit No. _____ in your favor by order and for account of (name of company submitting bid) up to an aggregate amount of \$ _____ available by demand drafts drawn on us by a representative of (specify agencies to which directed: e.g., Department of the Army, Department of the Air Force, General Services Administration). Drafts must be accompanied by a written statement of the interested agency that the amount drawn under this credit represents (1) the deposit required as a guarantee to support an acceptable bid made by (name of bidder) to purchase material from the Government, or (2) payment in full for the property. Drafts drawn under this credit must be marked "drawn under letter of credit No. _____ of (name and address of issuing bank)."

Unless otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practice for Commercial Documentary Credits© fixed by the 13th Congress of the

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International Chamber of Commerce. We hereby agree with you that the drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation to the (name of the bank) if presented on or before _____.

Very truly yours, (Authorized signature of bank official).

[59 FR 26739, May 24, 1994]

§ 101-45.4803 General instructions for preparation of irrevocable letter of credit.

Use either clause (1) or (2) of § 101-45.4802, as applicable.

Some banks use language which varies from that shown in § 101.45.4802. Variations from the prescribed text maybe permitted if the meaning of the letter of credit prepared by the bank is the same. Each of the paragraphs of the prescribed letter of credit is an essential part of the agreement. No paragraphs shall be added and none shall be deleted.

A letter of credit may be addressed to a specific department or agency instead of "Treasurer of the United States," letters of credit of this type shall be addressed to the head of the agency or department, as the Secretary of the Army, or the Administrator of General Services. Should this be done, the words "Treasurer of the United States for the account of" shall be deleted from the draft drawn under the letter of credit.

Each letter of credit must be clearly irrevocable and is not acceptable if the expiration date stated therein is less than 30 days from the date of the sale at which it is used.

[59 FR 26739, May 24, 1994]

§ 101-45.4804 Sample format—draft drawn against irrevocable letter of credit.

FORM OF DRAFT

\$ _____ Date _____

At sight pay to the order of Treasurer of the United States for the account of (specify name of department or agency). _____ dollars and _____ cents for value received—drawn under letter of credit No. _____ of _____

(Name and address of issuing bank)

To _____

(Name and address of bank)

(Name of office—finance or disbursing—and activity of department or agency by which draft is issued.)

By _____

Title _____

Date _____

NOTE: If the letter of credit is addressed to a department or agency rather than the Treasurer, omit the words "Treasurer of the

United States for the account of," and in lieu thereof insert the name of the particular department or agency or installation or office thereof.

[30 FR 2930, Mar. 6, 1965. Redesignated at 42 FR 40855, Aug. 12, 1977]

§ 101-45.4805 Sample format—transmittal letter to accompany letter of credit.

OFFICIAL LETTERHEAD

To: Name of bank (same as on L/C).

Gentlemen:

This is to certify that on ____, 196__, at a sale held by the (insert the name of the department or agency) at (insert location) the (insert name and address of company) submitted acceptable bids for property at sales price of \$ ____.

The amount of the accompanying draft, \$ _____, drawn under letter of credit No. _____ represents (1) the deposit of ____ percent of the sales price required as a guarantee to support the acceptable bid made by (insert name of company) to purchase material from the Government, or (2) payment in full for the property on which (insert name of company) submitted acceptable bids.

(Name of office—finance or disbursing—and activity of department or agency to which check is to be forwarded.)

By _____

Title _____

Date _____

NOTE: Strike out the clause in the second paragraph which is not applicable.

[30 FR 2930, Mar. 6, 1965. Redesignated at 42 FR 40855, Aug. 12, 1977]

§ 101-45.4806 Outline for preparation of explanatory statement relative to negotiated sales.

The following outline shall be used for the preparation of explanatory statements relative to negotiated sales:

EXPLANATION STATEMENT OF PROPOSED NEGOTIATED DISPOSAL OF SURPLUS PERSONAL PROPERTY SUBMITTED PURSUANT TO THE PROVISIONS OF SECTION 203(e)(6) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, 63 STAT. 386, AS AMENDED (40 U.S.C. 484(c)(6))

Description of property (including quantity and condition).

Use of property (an indication of the use of the property made by the Government).

Location.

Reported excess by (name of agency and date).

Excess and donation screening (show the extent of screening and results).

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Acquisition cost and date (if not known, estimate and so indicate).

Income (all income known to the holding agency, if any received by the Government for use of the property).

Estimated fair market value (including date of estimate and name of estimator).

Proposed disposal price.

Proposed purchaser (name and address).

Intended use (state the intended use of the property by the proposed purchaser).

Justification (a narrative statement containing complete justification for the proposed sale and other pertinent facts involved in the Government's decision to sell by negotiation).

[31 FR 5001, Mar. 26, 1966. Redesignated at 42 FR 40855, Aug. 12, 1977]

§ 101-45.4807 [Reserved]

§ 101-45.4808 State health agencies.

State Health Agencies (for Bedding and Upholstered Furniture Information).

ALABAMA

Director, Division of Environmental Health, State Office Building, Montgomery, AL 36104.

ALASKA

Chief, Environmental Health Section, Division of Public Health, Department of Health and Social Services, Pouch H 01, Juneau, AK 99811.

ARIZONA

Arizona Department of Health Services, Bureau of Sanitation, Bedding Section, 411 North 24th Street, Phoenix, AZ 85008.

ARKANSAS

Bureau of Public Health Engineering, Arkansas Department of Health, 13th Floor, Donaghey Building, 7th and Main Streets, Little Rock, AR 72201.

CALIFORNIA

Chief, Bureau of Home Furnishings, State of California, Department of Home Furnishings, 3401 La Grande Boulevard, Sacramento, CA 95823.

COLORADO

Chief, Consumer Protection Section, State of Colorado, Department of Health, 4210 East 11th Avenue, Denver, CO 80220.

CONNECTICUT

Commissioner, Department of Consumer Protection, Division of Bedding and Upholstered Furniture, 165 Capitol Avenue, Hartford, CT 06115.

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DELAWARE

Chief, Bureau of Environmental Health, Department of Health and Social Services, Division of Public Health, Post Office Box 637, Dover, DE 19901.

DISTRICT OF COLUMBIA

Environmental Health Scientist, Administrator, Room 733, Environmental Health Administration, 801 North Capitol Street, NE., Washington, DC 20001.

FLORIDA

Chief, Department of Health and Rehabilitative Services, Consumer Drugs and Devices Control Section, Post Office Box 210, Jacksonville, FL 32201.

GEORGIA

Director, Consumer Protection Field Forces, Georgia Department of Agriculture, 19 Martin Luther King Drive, Room 308, Atlanta, GA 30334.

HAWAII

Chief, Sanitation Branch, State Department of Health, Honolulu, HI 96813.

IDAHO

Chief, Idaho Department of Health and Welfare, Division of Environment, Milk and Food Section, Statehouse, Boise, ID 83720.

ILLINOIS

No need to notify.

INDIANA

Supervisor, Sanitary Bedding Section, Division of Weights and Measures, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, IN 46206.

IOWA

Secretary, Iowa State Department of Agriculture, State Capitol Building, Des Moines, IA 50319.

KANSAS

Chief, Food and Drug Division, Kansas State Department of Health and Environment, State Office Building, Topeka, KS 66620.

KENTUCKY

Commissioner, Environmental Sanitation Branch, Division of Consumer Health Protection, Health Services Building, 275 East Main Street, Frankfort, KY 40601.

LOUISIANA

Director, Bedding and Upholstered Furniture Division, Louisiana Health and Human Resources Administration, Post Office Box 60630, New Orleans, LA 70160.

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MAINE

Director, Department of Manpower Affairs, Maine Bureau of Labor, State Office Building, Augusta, ME 04333.

MARYLAND

No need to notify.

MASSACHUSETTS

Director, Division of Food and Drugs, Massachusetts Department of Public Health, Statehouse, Boston, MA 02133.

MICHIGAN

Chief, Michigan Department of Public Health, Division of Community Environment Health, Consultation, Evaluation & Training Section, 3500 North Logan Street, Post Office Box 30035, Lansing, MI 48909.

MINNESOTA

Chief, Section of Hotels, Resorts & Restaurants, Minnesota Department of Health, 77 South East Delaware Street, Minneapolis, MN 55440.

MISSISSIPPI

Director, Division of Sanitary Engineering, Mississippi State Board of Health, Post Office Box 1700, Jackson, MS 39205.

MISSOURI

Director, Bureau of Community Sanitation, Department of Social Services, Missouri Division of Health, Broadway State Office Building, Post Office Box 570, Jefferson City, MO 65101.

MONTANA

Director, Food and Consumer Safety Bureau, Environmental Sciences Division, Montana Department of Health and Environmental Science, Helena, MT 59601.

NEBRASKA

Chief, Division of Housing and Environmental Health, 301 Centennial Mall South, Post Office Box 95007, Lincoln, NE 68509.

NEVADA

Chief, Consumer Health Protection Services, Room 103, Kinkead Building, Capitol Complex, Carson City, NV 89710.

NEW HAMPSHIRE

No need to notify.

NEW JERSEY

Director, Division of Environmental Health, New Jersey State Department of Health and Social Services, John Fitch Plaza, Post Office Box 1540, Trenton, NJ 08625.

NEW MEXICO

Director, EIA Legal Section, State of New Mexico, Health and Social Services Department, Post Office Box 2348, Santa Fe, NM 87503.

NEW YORK

Director, Division of Licensing Services, Department of State, 270 Broadway, New York, NY 10007.

NORTH CAROLINA

Head, Solid Waste and Vector Control Branch, Sanitary Engineering Section, Post Office Box 2091, Raleigh, NC 27602.

NORTH DAKOTA

Chief, North Dakota State Department of Health, Division of Environmental Engineering Bedding Program, 1200 Missouri Avenue, Bismarck, ND 58505.

OHIO

Chief, Department of Industrial Relations, Division of Bedding and Upholstered Furniture Inspection, Post Office Box 825, Columbus, OH 43216.

OKLAHOMA

Head, Consumer Information and Product Safety Division, Consumer Protection Service, Oklahoma State Department of Health, Post Office Box 53551, Oklahoma City, OK 73105.

OREGON

Program Supervisor, Department of Human Resources, Health Division, Post Office Box 231, Portland, OR 97207.

PENNSYLVANIA

Chief, Division of Bedding and Upholstery, Department of Labor and Industry, Seventh and Forster Streets, Harrisburg, PA 17120.

PUERTO RICO

Director, Program of Environmental Health, Puerto Rico Department of Health, Ponce de Leon Avenue 1306, Box 9342, Santurce, PR 00908.

RHODE ISLAND

Chief, Division of Upholstery, State of Rhode Island Department of Business Regulation, 49 Westminster Street, Room 420, Providence, RI 02903.

SOUTH CAROLINA

Consultant, Bureau of Environmental Sanitation, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

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SOUTH DAKOTA

Director, Division of Sanitary Engineering,
South Dakota Department of Health, Joe
Foss Building, Pierre, SD 57501.

TENNESSEE

Director, Food and Drug Division, Tennessee
Department of Agriculture, Post Office
Box 40627, Melrose Station, Nashville, TN
37204.

TEXAS

Director, Bedding-Law Division, Texas De-
partment of Health Resources, Austin, TX
78756.

UTAH

State Chemists Office, Utah Department of
Agriculture, Laboratory Building, State
Capitol, Salt Lake City, UT 84114.

VERMONT

No need to notify.

VIRGINIA

Supervisor, Bedding and Upholstered Fur-
niture, Department of Health, 109 Governor
Street, Richmond, VA 23219.

VIRGIN ISLANDS

Director, Division of Environmental Health,
Virgin Islands Department of Health, Post
Office Box 1442, Charlotte Amalie, VI 00801.

WASHINGTON

Supervisor, Department of Social and Health
Services, Food and Housing Section, Attn:
Furniture and Bedding Program
(Mailstop)-MS-LD-11, Olympia, WA 98504.

WEST VIRGINIA

Director, Consumer Protection, West Vir-
ginia Department of Labor, State Capitol,
1800 Washington Street East, Charleston,
WV 25305.

WISCONSIN

Chief Engineer, Safety and Buildings Divi-
sion, Wisconsin Department of Industry,
Labor and Human Relations, 201 East
Washington Avenue, Madison, WI 53707.

WYOMING

Director, Division of Markets and Industry,
Wyoming State Department of Agri-
culture, 308 Capitol, Cheyenne, WY 82001.

[43 FR 26579, June 21, 1978]

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**Subpart 101-45.49—Illustrations of
Forms**

SOURCE: 42 FR 40857, Aug. 12, 1977, unless
otherwise noted.

EDITORIAL NOTE: The forms illustrated in
subpart 101-45.49 are filed as part of the
original document.

§ 101-45.4900 Scope of subpart.

This subpart illustrates forms pre-
scribed or available for use in connec-
tion with subject matter covered in
part 101-45.

§ 101-45.4901 Standard forms.

(a) Standard forms illustrated in this
section show their text, format, and ar-
rangement, and provide a ready source
of reference.

(b) Standard forms illustrated in this
§ 101-45.4901 may be obtained by sub-
mitting a requisition in FEDSTRIP/
MILSTRIP format to the GSA regional
office providing support to the request-
ing activity.

**§ 101-45.4901-28 Standard Form 28, Af-
fidavit of Individual Surety.**

**§ 101-45.4901-97 Standard Form 97,
The United States Government Cer-
tificate to Obtain Title to a Vehicle.**

**§ 101-45.4901-97-1 Instructions for use
of Standard Form 97.**

**§ 101-45.4901-114 Standard Form 114,
Sale of Government Property—Bid
and Award.**

**§ 101-45.4901-114A Standard Form
114A, Sale of Government Prop-
erty—Item Bid Page—Sealed Bid.**

**§ 101-45.4901-114B Standard Form
114B, Sale of Government Prop-
erty—Item Bid Page—Sealed Bid.**

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§ 101-45.4901-114C Standard Form 114C, Sale of Government Property—General Sale Terms and Conditions.

§ 101-45.4901-150 Standard Form 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property.

§ 101-45.4901-114C-1 Standard Form 114C-1, Sale of Government Property—Special Sealed Bid Conditions.

§ 101-45.4901-151 Standard Form 151, Deposit Bond—Annual, Sale of Government Personal Property.

§ 101-45.4901-114C-2 Standard Form 114C-2, Sale of Government Property—Special Sealed Bid—Term Conditions.

§ 101-45.4902 GSA forms.

(a) GSA forms in this section show their text, format, and arrangement and provide a ready source of reference.

(b) GSA forms in this section may be obtained initially from the General Service Administration, National Forms and Publications Center, 4900 South Hemphill Street, Warehouse No. 4, Dock No. 1, Fort Worth, Texas 76115. Agency regional or field offices should submit future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (CAIR), Washington, DC 20405.

§ 101-45.4901-114C-3 Standard Form 114C-3, Sale of Government Property—Special Spot Bid Conditions.

§ 101-45.4901-114C-4 Standard Form 114C-4, Sale of Government Property—Special Auction Conditions.

§ 101-45.4901-114D Standard Form 114D, Sale of Government Property—Amendment of Invitation for Bids/Modification of Contract.

[42 FR 40857, Aug. 12, 1977, as amended at 53 FR 16125, May 5, 1988]

§ 101-45.4901-114E Standard Form 114E, Sale of Government Property—Negotiated Sales Contract.

§ 101-45.4902-27 GSA Form 27, Notice of Award (Sale of Government-Owned Personal Property).

§ 101-45.4901-114F Standard Form 114F, Sale of Government Property—Item Bid Page—Spot Bid or Auction.

§ 101-45.4902-27A GSA Form 27A, Notice of Award—Continuation.

§ 101-45.4901-126 Standard Form 126, Report of Personal Property for Sale.

§ 101-45.4903 Optional forms.

Optional forms illustrated in this §101-45.4903 show their text, format, and arrangement and provide a ready source of reference. The numbers in this subsection correspond with the Optional form numbers. Optional forms illustrated in this §101-45.4903 may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

§ 101-45.4901-126A Standard Form 126A, Report of Personal Property for Sale (Continuation Sheet).

§ 101-45.4903-15

§ 101-45.4903-15 Optional Form 15, poster, Sale of Government Property.

§ 101-45.4903-16 Optional Form 16, Sales Slip, Sale of Government Personal Property.

§ 101-45.4903-20 Optional Form 20, Notice to Surety—Deposit Bond—Annual Sale of Government Personal Property.

PART 101-46—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Sec.

- 101-46.000 Why should executive agencies use the exchange/sale authority?
- 101-46.001 What is prescribed by this part?
- 101-46.002 What are the definitions of some of the key terms used in this part?
 - 101-46.002-1 Acquire.
 - 101-46.002-2 Combat material.
 - 101-46.002-3 Exchange.
 - 101-46.002-4 Exchange/sale.
 - 101-46.002-5 Executive agency.
 - 101-46.002-6 Federal agency.
 - 101-46.002-7 Historic item.
 - 101-46.002-8 Replacement.
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- 101-46.003 How do you request deviations from this part, and who can approve them?

Subpart 101-46.1 [Reserved]

Subpart 101-46.2—Exchange or Sale Determination

- 101-46.200 How do you determine whether to do an exchange or a sale?
- 101-46.201 When must you make a reimbursable transfer to another Federal agency?
- 101-46.202 To what other organizations may you make a reimbursable transfer?
- 101-46.203 What are the conditions for a reimbursable transfer?
- 101-46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?
- 101-46.205 What special exceptions apply to the exchange/sale authority?

Subpart 101-46.3—Exchange/Sale Methods

- 101-46.300 What are the exchange methods?
- 101-46.301 What are the sales methods?
- 101-46.302 What are the accounting requirements for the proceeds of sale?

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

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SOURCE: 63 FR 5893, Feb. 5, 1998, unless otherwise noted.

§ 101-46.000 Why should executive agencies use the exchange/sale authority?

To reduce the agencies' need for additional funding for the acquisition of replacement personal property. If an agency has personal property that needs to be replaced, it can exchange or sell that property and apply the exchange allowance or sales proceeds to the acquisition of similar replacement property. Using the exchange/sale authority also enables agencies to avoid the costs (e.g., administrative and storage) associated with holding the property and processing it through the normal disposal cycle, i.e., reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, sale to the public, or abandonment or destruction. By contrast, if the holding agency does not use the exchange/sale authority but instead reports the property to be replaced as excess, any sales proceeds are forwarded to the miscellaneous receipts account at the United States Treasury and are not available to the agency disposing of the property.

§ 101-46.001 What is prescribed by this part?

Provisions for use by you (an executive agency) when using the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). This part applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101-37 and 101-42 of this chapter, respectively.

§ 101-46.002 What are the definitions of some of the key terms used in this part?

§ 101-46.002-1 Acquire.

To procure or otherwise obtain personal property, including by lease.

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§ 101-46.200

§ 101-46.002-2 **Combat material.**

Arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

§ 101-46.002-3 **Exchange.**

To replace personal property by trade or trade-in with the supplier of the replacement property.

§ 101-46.002-4 **Exchange/sale.**

To exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

§ 101-46.002-5 **Executive agency.**

Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

§ 101-46.002-6 **Federal agency.**

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

§ 101-46.002-7 **Historic item.**

Property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

§ 101-46.002-8 **Replacement.**

The process of acquiring property to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it is used.

§ 101-46.002-9 **Similar.**

Where the acquired item and replaced item:

- (a) Are identical; or
- (b) Are designed and constructed for the same purpose; or

(c) Both constitute parts or containers for identical or similar end items; or

(d) Both fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 101-46.003 **How do you request deviations from this part, and who can approve them?**

(a) General provisions for deviations from the Federal Property Management Regulations are found in §101-1.110 of this chapter. Provisions for deviations from the regulations in this part are presented in this section.

(b) To request deviations from this part, you must submit a complete written justification to the General Services Administration (GSA), Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), Washington, DC 20405. Only the Administrator of General Services (or designee) may grant deviations. Although the Administrator can approve deviations from most of the provisions in this part, he/she cannot approve deviations from provisions that are mandated by statute, i.e., the requirement at 101-46.204(b)(1) that the property exchanged or sold is similar to the property acquired, and the requirement at 101-46.204(b)(2) that the property exchanged or sold is not excess or surplus.

Subpart 101-46.1 [Reserved]

Subpart 101-46.2—Exchange or Sale Determination

§ 101-46.200 **How do you determine whether to do an exchange or a sale?**

(a) You must determine which method—exchange or sale—will provide the greater return for the Government. When estimating the return under each method, consider all administrative and overhead costs.

(b) If the exchange allowance or estimated sales proceeds for property would be unreasonably low, you should process the property according to the regulations in Part 101-43 (Utilization of Personal Property) or Subpart 101-45.9 (Abandonment or Destruction of

§ 101-46.201

Personal Property) of this subchapter, as applicable.

§ 101-46.201 When must you make a reimbursable transfer to another Federal agency?

If you have property to replace which is eligible for exchange/sale, you should, to the maximum extent practicable, first solicit Federal agencies known to use or distribute such property and, if an agency wants it, arrange for a reimbursable transfer. Property that meets the replacement standards prescribed in subpart 101-25.4 of this chapter is not subject to this requirement.

§ 101-46.202 To what other organizations may you make a reimbursable transfer?

The Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

§ 101-46.203 What are the conditions for a reimbursable transfer?

When transferring property, you must:

- (a) Do so under terms mutually agreeable to you and the recipient; and
- (b) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and
- (c) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

§ 101-46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?

(a) You must not use the exchange/sale authority for:

(1) The following FSC groups of personal property:

- 10 Weapons.
- 11 Nuclear ordnance.
- 12 Fire control equipment.
- 14 Guided missiles.
- 15 Aircraft and airframe structural components, except FSC class 1560 Airframe Structural Components.
- 42 Firefighting, rescue, and safety equipment.
- 44 Nuclear reactors (FSC class 4472 only).

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- 51 Hand tools.
- 54 Prefabricated structure and scaffolding.
- 68 Chemicals and chemical products, except medicinal chemicals.
- 71 Furniture.
- 84 Clothing, individual equipment, and insignia.

(2) Materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(3) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of §101-42.1102-4 of this subchapter.

(4) Controlled substances, unless you meet the requirements of §101-42.1102-3 of this subchapter.

(5) Scrap materials, except in the case of scrap gold for fine gold.

(6) Property which was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(7) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(8) Combat material without demilitarizing it in accordance with applicable regulations.

(9) Flight Safety Critical Aircraft Parts unless you meet the provisions of §101-37.610 of this chapter.

(10) Acquisition of unauthorized replacement property.

(11) Acquisition of replacement property which violates:

- (i) Any restriction on procurement of a commodity or commodities; or
- (ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or
- (iii) Any contractual obligation.

(b) You may use the exchange/sale authority only if you meet all of the following conditions:

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§ 101-46.302

(1) The property exchanged or sold is similar to the property acquired; and

(2) The property exchanged or sold is not excess or surplus, and the property acquired is needed for approved programs; and

(3) The number of items acquired must equal the number of items exchanged or sold unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the item(s) exchanged or sold would otherwise be used; or

(ii) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified at §101-46.002-9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and

(5) You document at the time of exchange or sale (or at the time of acquisition if it precedes the sale):

(i) That the exchange allowance or sale proceeds will be applied to the acquisition of replacement property; and

(ii) For any property exchanged or sold under this part, the pertinent Federal Supply Classification (FSC) Group, the number of items, the original acquisition cost, the exchange allowance or sales proceeds (as applicable), and the source from which the property was originally acquired i.e., new procurement, excess, forfeiture, or another source other than new procurement. These data, aggregated at the agency level, may be requested by GSA to evaluate use of the exchange/sale authority.

§101-46.205 What special exceptions apply to the exchange/sale authority?

(a) You may exchange books and periodicals in your libraries for other books and periodicals, without monetary appraisal or detailed listing or reporting.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group or the requirement in §101-46.204(b)(3), provided the exchange transaction is documented and certified by the head of

your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart 101-46.3—Exchange/Sale Methods

§101-46.300 What are the exchange methods?

Exchange of property may be accomplished by either of the following two methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit. This is the normal manner of exchange.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

§101-46.301 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in §101-45.304 of this subchapter in the sale of property being replaced, except that the provisions of §101-45.304-2(a) of this subchapter regarding negotiated sales are not applicable. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed \$500, or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of §101-45.304-2(b) of this subchapter.

§101-46.302 What are the accounting requirements for the proceeds of sale?

Except as otherwise authorized by law, you must account for proceeds from sales of personal property disposed of under this part in accordance

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with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Sec.

101-47.000 Scope of part.

Subpart 101-47.1—General Provisions

- 101-47.100 Scope of subpart.
- 101-47.101 Applicability.
- 101-47.102 [Reserved]
- 101-47.103 Definitions.
 - 101-47.103-1 Act.
 - 101-47.103-2 GSA.
 - 101-47.103-3 Airport.
 - 101-47.103-4 [Reserved]
 - 101-47.103-5 Decontamination.
 - 101-47.103-6 Disposal agency.
 - 101-47.103-7 Holding agency.
 - 101-47.103-8 Industrial property.
 - 101-47.103-9 Landing area.
 - 101-47.103-10 Management.
 - 101-47.103-11 Protection.
 - 101-47.103-12 Real property.
 - 101-47.103-13 Related personal property.
 - 101-47.103-14 Other terms defined in the Act.
 - 101-47.103-15 Other terms.

Subpart 101-47.2—Utilization of Excess Real Property

- 101-47.200 Scope of subpart.
- 101-47.201 General provisions of subpart.
 - 101-47.201-1 Policy.
 - 101-47.201-2 Guidelines.
 - 101-47.201-3 Lands withdrawn or reserved from the public domain.
 - 101-47.201-4 Transfers under other laws.
- 101-47.202 Reporting of excess real property.
 - 101-47.202-1 Reporting requirements.
 - 101-47.202-2 Report forms.
 - 101-47.202-3 Submission of reports.
 - 101-47.202-4 Exceptions to reporting.
 - 101-47.202-5 Reporting after submissions to the Congress.
 - 101-47.202-6 Reports involving the public domain.
 - 101-47.202-7 Reports involving contaminated property.
 - 101-47.202-8 Notice of receipt.
 - 101-47.202-9 Expense of protection and maintenance.
 - 101-47.202-10 Examination for acceptability.
- 101-47.203 Utilization.
 - 101-47.203-1 Reassignment of real property by the agencies.
 - 101-47.203-2 Transfer and utilization.
 - 101-47.203-3 Notification of agency requirements.
 - 101-47.203-4 Real property excepted from reporting.

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- 101-47.203-5 Screening of excess real property.
- 101-47.203-6 Designation as personal property.
 - 101-47.203-7 Transfers.
 - 101-47.203-8 Temporary utilization.
 - 101-47.203-9 Non-Federal interim use of property.
 - 101-47.203-10 Withdrawals.
- 101-47.204 Determination of surplus.
 - 101-47.204-1 Reported property.
 - 101-47.204-2 Property excepted from reporting.

Subpart 101-47.3—Surplus Real Property Disposal

- 101-47.300 Scope of subpart.
- 101-47.301 General provisions of subpart.
 - 101-47.301-1 Policy.
 - 101-47.301-2 Applicability of antitrust laws.
 - 101-47.301-3 Disposals under other laws.
 - 101-47.301-4 Credit disposals and leases.
- 101-47.302 Designation of disposal agencies.
 - 101-47.302-1 General.
 - 101-47.302-2 Holding agency.
 - 101-47.302-3 General Services Administration.
 - 101-47.303 Responsibility of disposal agency.
 - 101-47.303-1 Classification.
 - 101-47.303-2 Disposals to public agencies.
 - 101-47.303-2a Notice for zoning purposes.
 - 101-47.303-3 Studies.
 - 101-47.303-4 Appraisal.
 - 101-47.304 Advertised and negotiated disposals.
 - 101-47.304-1 Publicity.
 - 101-47.304-2 Soliciting cooperation of local groups.
 - 101-47.304-3 Information to interested persons.
 - 101-47.304-4 Invitation for offers.
 - 101-47.304-5 Inspection.
 - 101-47.304-6 Submission of offers.
 - 101-47.304-7 Advertised disposals.
 - 101-47.304-8 [Reserved]
 - 101-47.304-9 Negotiated disposals.
 - 101-47.304-10 Disposals by brokers.
 - 101-47.304-11 Documenting determinations to negotiate.
 - 101-47.304-12 Explanatory statements.
 - 101-47.304-13 Provisions relating to asbestos.
 - 101-47.304-14 Provisions relating to hazardous substance activity.
- 101-47.305 Acceptance of offers.
 - 101-47.305-1 General.
 - 101-47.305-2 Equal offers.
 - 101-47.305-3 Notice to unsuccessful bidders.
- 101-47.306 Absence of acceptable offers.
 - 101-47.306-1 Negotiations.
 - 101-47.306-2 Defense Industrial Reserve properties.
- 101-47.307 Conveyances.
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- 101-47.4902-1 Standard Form 118a, Buildings, Structures, Utilities, and Miscellaneous Facilities.
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- 101-47.4902-4 Instructions for the preparation of Standard Form 118, and Attachments, Standard Forms 118a, 118b, and 118c.
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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 29 FR 16126, Dec. 3, 1964, unless otherwise noted.

§ 101-47.000 Scope of part.

(a) This part prescribes the policies and methods governing the utilization and disposal of excess and surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) For more information on the utilization and disposal of real property, see 41 CFR parts 102-71 through 102-82.

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To the extent that any policy statements in this part are inconsistent with the policy statements in 41 CFR parts 102-71 through 102-82, the policy statements in 41 CFR parts 102-71 through 102-82 are controlling.

[47 FR 4521, Feb. 1, 1982, as amended at 66 FR 5359, Jan. 18, 2001]

Subpart 101-47.1—General Provisions

§ 101-47.100 Scope of subpart.

This subpart sets forth the applicability of this part 101-47, and other introductory information.

§ 101-47.101 Applicability.

The provisions of this part 101-47 apply to all Federal agencies, except as may otherwise be specifically provided under each section or subpart.

§ 101-47.102 [Reserved]

§ 101-47.103 Definitions.

As used throughout this part 101-47, the following terms shall have the meanings as set forth in this subpart 101-47.1.

§ 101-47.103-1 Act.

The Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

§ 101-47.103-2 GSA.

The General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part 101-47 have been delegated by the Administrator of General Services.

§ 101-47.103-3 Airport.

Any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

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§ 101-47.103-4 [Reserved]

§ 101-47.103-5 Decontamination.

The complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

[53 FR 29893, Aug. 9, 1988]

§ 101-47.103-6 Disposal agency.

The executive agency designated by the Administrator of General Services to dispose of surplus real property.

§ 101-47.103-7 Holding agency.

The Federal agency which has accountability for the property involved.

§ 101-47.103-8 Industrial property.

Any real property and related personal property which has been used or which is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

§ 101-47.103-9 Landing area.

Any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, take-off, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

§ 101-47.103-10 Management.

The safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

§ 101-47.103-11 Protection.

The provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine

and eliminate fire and other hazards, and necessary guards to protect property against thievery, vandalism, and unauthorized entry.

§ 101-47.103-12 Real property.

(a) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailer with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except:

(1) The public domain;

(2) Lands reserved or dedicated for national forest or national park purposes;

(3) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(4) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(5) Crops when designated by such agency for disposition by severance and removal from the land.

(b) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, or lands withdrawn or reserved from the public domain, or lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailer (with or without undercarriages).

(c) Standing timber and embedded gravel, sand, or stone under the control

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of any Federal agency whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965; 33 FR 8737, June 14, 1968]

§ 101-47.103-13 Related personal property.

Related personal property means any personal property:

(a) Which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property. Normally, common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or

(b) Which is determined by the Administrator of General Services to be related to the real property.

[46 FR 45951, Sept. 16, 1981]

§ 101-47.103-14 Other terms defined in the Act.

Other terms which are defined in the Act shall have the meanings given them by such Act.

§ 101-47.103-15 Other terms.

Other terms not applicable throughout this part are defined in the sections or subparts to which they apply.

Subpart 101-47.2—Utilization of Excess Real Property

§ 101-47.200 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the reporting by executive agencies and utilization by Federal agencies of excess real property, including related personal property within the State of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Is-

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lands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by subpart 101-47.5).

(b) The provisions of this subpart 101-47.2 shall not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

[53 FR 29893, Aug. 9, 1988]

§ 101-47.201 General provisions of subpart.

§ 101-47.201-1 Policy.

It is the policy of the Administrator of General Services:

(a) To stimulate the identification and reporting by executive agencies of excess real property.

(b) To achieve the maximum utilization by executive agencies, in terms of economy and efficiency, of excess real property in order to minimize expenditures for the purchase of real property.

(c) To provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

§ 101-47.201-2 Guidelines.

(a) Each executive agency shall:

(1) Survey real property under its control (including property assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests) at least annually to identify property which is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency shall determine whether continuation of the current use or another Federal or other use would better serve the public interest, considering both the agency's needs and the property's location. In conducting each review, agencies shall be guided by § 101-47.801(b), other applicable General Services Administration regulations, and such criteria as may be established by the Federal Property Council;

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(2) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(3) Promptly report to GSA real property which it has determined to be excess.

(b) Each executive agency shall, so far as practicable, pursuant to the provisions of this subpart, fulfill its needs for real property by utilization of excess real property.

(c) To preclude the acquisition by purchase of real property when excess or surplus property of another Federal agency may be available which would meet the need, each executive agency shall notify GSA of its needs and ascertain whether any such property is available. However, in specific instances where the agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics which limit the possible use of other available property, the notification shall not be required. For example, for a dam site or reservoir area or the construction of a generating plant or a substation specific lands are needed and, ordinarily, no purpose would be served by such notification.

(d) In every case of a proposed transfer of excess real property, the paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based.

(1) A proposed transfer should not establish a new program of an executive agency which has never been reflected in any previous budget submission or congressional action; nor should it substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(2) Before requesting a transfer of excess real property, an executive agency should:

(i) Screen the holdings of the bureaus or other organizations within the agency to determine whether the new requirement can be met through improved utilization. Any utilization, however, must be for purposes that are consistent with the highest and best

use of the property under consideration; and

(ii) Review all real property under its accountability which it has assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests and terminate the permit or lease for any property, or portion thereof, that is suitable for the proposed need whenever such termination is not prohibited by the terms of the permit or lease.

(3) Property found to be available under §101-47.201-2(d)(2) (i) or (ii), should be utilized for the proposed need in lieu of requesting a transfer of excess real property. Reassignments of such property within the agency should be made in appropriate cases.

(4) The appraised fair market value of the excess real property proposed for transfer should not substantially exceed the probable purchase price of other real property which would be suitable for the intended purpose.

(5) The size and quantity of excess real property to be transferred should be limited to the actual requirements. Other portions of an excess installation which can be separated should be withheld from transfer and made available for disposal to other agencies or to the public.

(6) Consideration should be given to the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer. It should be clearly demonstrated that the transfer will prove more economical over a sustained period of time than acquisition of a new facility specifically planned for the purpose.

(7) Excess real property should not be permanently transferred to agencies for programs which appear to be scheduled for substantial curtailment or termination. In such cases, the property may be temporarily transferred on a conditional basis, with an understanding that the property will be released for further Federal utilization or disposal as surplus property, at a time agreed upon when the transfer is arranged (see §101-47.203-8).

(e) Excess real property of a type which may be used for office, storage, and related purposes normally will be

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assigned by, or at the direction of, GSA for use to the requesting agency in lieu of being transferred to the agency.

(f) Federal agencies which normally do not require real property, other than for office, storage, and related purposes, or which may not have statutory authority to acquire such property, may obtain the use of excess real property for an approved program when authorized by GSA.

[29 FR 16126, Dec. 3, 1964, as amended at 39 FR 11281, Sept. 2, 1965; 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975]

§ 101-47.201-3 Lands withdrawn or reserved from the public domain.

(a) Agencies holding lands withdrawn or reserved from the public domain, which they no longer need, shall send to the GSA regional office for the region in which the lands are located an information copy of each notice of intention to relinquish filed with the Department of the Interior (43 CFR part 2372, *et seq.*).

(b) Section 101-47.202-6 prescribes the procedure for reporting to GSA as excess property, certain lands or portions of lands withdrawn or reserved from the public domain for which such notices have been filed with the Department of the Interior.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

§ 101-47.201-4 Transfers under other laws.

Pursuant to section 602(c) of the Act, transfers of real property shall not be made under other laws, but shall be made only in strict accordance with the provisions of this subpart unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which a transfer is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to transfers of real property authorized to be made by section 602(d) of the Act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

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§ 101-47.202 Reporting of excess real property.

§ 101-47.202-1 Reporting requirements.

Each executive agency shall report to GSA, pursuant to the provisions of this section, all excess real property except as provided in §101-47.202-4. Reports of excess real property shall be based on the agency's official real property records and accounts.

(a) All excess related personal property shall be reported as a part of the same report covering the excess real property.

(b) Upon request of the Administrator of General Services, executive agencies shall institute specific surveys to determine that portion of real property, including unimproved property, under their control which might be excess and suitable for office, storage, and related facilities, and shall report promptly to the Administrator of General Services as soon as each survey is completed.

§ 101-47.202-2 Report forms.

Reports of excess real property and related personal property shall be prepared on Standard Form 118, Report of Excess Real Property (see §101-47.4902), and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A (§101-47.4902-1); Standard Form 118b, Land, Schedule B (see §101-47.402-2); and Standard Form 118c, Related Personal Property, Schedule C (see §101-47.4902-3). Instructions for the preparation of Standard Forms 118, 118a, 118b, and 118c are set forth in §101-47.4902-4.

(a) Property for which the holding agency is designated as the disposal agency under the provisions of §101-47.302-2 and which is required to be reported to GSA under the provisions of this section shall be reported on Standard Form 118, without the accompanying Schedules A, B, and C, unless the holding agency requests GSA to act as disposal agency and a statement to that effect is inserted in Block 18, Remarks, of Standard Form 118.

(b) In all cases where Government-owned land is reported, there shall be attached to and made a part of Standard Form 118 (original and copies

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thereof) a report prepared by a qualified employee of the holding agency on the Government's title to the property based upon his review of the records of the agency. The report shall recite:

- (1) The description of the property.
- (2) The date title vested in the United States.
- (3) All exceptions, reservations, conditions, and restrictions, relating to the title acquired.
- (4) Detailed information concerning any action, thing, or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected or may have affected the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect shall be made a part of the report.
- (5) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect shall be made a part of the report.
- (6) Detailed information regarding any known flood hazards or flooding of the property and, if located in a floodplain or wetlands, a listing of and citations to those uses that are restricted under identified Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977.
- (7) The specific identification and description of fixtures and related personal property that have possible historic or artistic value.
- (8) The historical significance of the property, if any, and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property on the National Register. If the holding agency is aware of any effort by the public to have the property listed on the National Register, this information should be included.

(9) To the extent such information is reasonably available or ascertainable from agency files, personnel, and other inquiry, a description of the type, location and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fireproofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. To assist GSA in considering the disposal options for the property, agencies shall also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (See also §101-47.200(b).)

(10) With respect to hazardous substance activity on the property:

(i) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the Environmental Protection Agency at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property shall review the regulations issued by the Environmental Protection Agency at 40 CFR part 373 for details on the information required.

(ii) If such activity took place, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. In addition to the specific information on the type and quantity of the hazardous substance, the reporting agency shall also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of the property was reported excess. If such action has not been taken, the reporting agency shall advise the disposal agency when such action will be completed.

(iii) If no such activity took place, the reporting agency must include a statement:

The (reporting agency) has determined, accordance with regulations issued by the Environmental Protection Agency at 40 CFR part 373, that there is no evidence to indicate that hazardous substance activity took place on the property during the time the property was owned by the United States.

(c) There shall be transmitted with Standard Form 118:

(1) A legible, reproducible copy of all instruments in possession of the agency which affect the right, title, or interest of the United States in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). In cases where the agency considers it to be impracticable to transmit the abstracts of title and related title evidence, such documents need not be transmitted; however, the name and address of the custodian of such documents shall be stated in the title report referred to in §101-47.202-2(b) and they shall be furnished if requested by GSA;

(2) Any appraisal reports in the possession of the holding agency of the fair market value or the fair annual rental of the property reported; and

(3) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by the Environmental Protection Agency under 40 CFR part 761. If the property does contain any equipment subject to 40 CFR part 761, the certification must include an assurance on behalf of the holding agency that each item of such equipment is now and will be maintained in a state of compliance with such regulations until disposal of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 8166, May 24, 1969; 40 FR 22256, May 22, 1975; 44 FR 19406, Apr. 3, 1979; 52 FR 46467, Dec. 8, 1987; 53 FR 29893, Aug. 9, 1988; 56 FR 15048, Apr. 15, 1991]

§ 101-47.202-3 Submission of reports.

Reports of excess shall be filed with the regional office of GSA for the region in which the excess property is located, as follows:

(a) Government-owned real property and related personal property shall be reported by the holding agencies 90-calendar days in advance of the date such excess property shall become available for transfer to another Federal agency or for disposal. Where the circumstances will not permit excess real property and related personal property to be reported a full 90-calendar days in advance of the date it will be available, the report shall be made as far in advance of such date as possible.

(b) Leasehold interests in real property determined to be excess shall be reported at least 60-calendar days prior to the date on which notice of termination or cancellation is required by the terms of the instrument under which the property is occupied.

(c) All reports submitted by the Department of Defense shall bear the certification "This property has been screened against the known needs of the Department of Defense." All reports submitted by civilian agencies shall bear the certification "This property has been screened against the known needs of the holding agency."

§ 101-47.202-4 Exceptions to reporting.

(a) A holding agency shall not report to GSA leased space assigned to the agency by GSA and determined by the agency to be excess.

(b) Also, except for those instances set forth in §101-47.202-4(c) a holding agency shall not report to GSA property used, occupied, or controlled by the Government under a lease, permit, license, easement, or similar instrument when:

(1) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(2) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy;

(3) The term of the lease or other instrument would preclude transfer to, or use by, another Federal agency or disposal to a third party; or

(4) The lease or other instrument provides for use and occupancy of space

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for office, storage, and related facilities, which does not exceed a total of 2,500 sq. feet.

(c) Property, which otherwise would not be reported because it falls within the exceptions set forth in §101-47.202-4(b) shall be reported:

(1) If there are Government owned improvements located on the premises; or

(2) If the continued use, occupancy, or control of the property by the Government is needful for the operation, production, or maintenance of other property owned or controlled by the Government that has been reported excess or is required to be reported to GSA under the provisions of this section.

§ 101-47.202-5 Reporting after submissions to the Congress.

Reports of excess covering property of the military departments and of the Office of Emergency Planning prepared after the expiration of 30 days from the date upon which a report of the facts concerning the reporting of such property was submitted to the Committees on Armed Services of the Senate and House of Representatives, 10 U.S.C. 2662 and the Act of August 10, 1956, 70A Stat. 636, as amended (50 U.S.C. App. 2285), shall contain a statement that the requirements of the statute have been met.

§ 101-47.202-6 Reports involving the public domain.

(a) Agencies holding land withdrawn or reserved from the public domain which they no longer need, shall report on Standard Form 118, with appropriate Schedules A, B, and C, land or portions of land so withdrawn or reserved and the improvements thereon, if any, to the regional office of GSA for the region in which the lands are located when the agency has:

(1) Filed a notice of intention to relinquish with the Department of the Interior and sent a copy of the notice to the regional office of GSA (§101-47.201-3);

(2) Been notified by the Department of the Interior that the Secretary of the Interior, with the concurrence of the Administrator of General Services, has determined the lands are not suit-

able for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(3) Obtained from the Department of the Interior a report as to whether any agency (other than the holding agency) claims primary, joint, or secondary jurisdiction over the lands and whether the Department's records show the lands to be encumbered with any existing valid rights or privileges under the public land laws.

(b) Should the Department of the Interior determine that minerals in the lands are not suitable for disposition under the public land mining and mineral leasing laws, the Department will notify the appropriate regional office of GSA of such determination and will authorize the holding agency to include the minerals in its report to GSA.

(c) When reporting the property to GSA, a true copy of the notification (§101-47.202-6(a)(2)) and report (§101-47.202-6(a)(3)) shall be submitted as a part of the holding agency's report on the Government's legal title which shall accompany Standard Form 118.

§ 101-47.202-7 Reports involving contaminated property.

Any report of excess covering property which in its present condition is dangerous or hazardous to health and safety, shall state the extent of such contamination, the plans for decontamination, and the extent to which the property may be used without further decontamination. In the case of properties containing asbestos-containing materials and in lieu of the requirements of the foregoing provisions of §101-47.202-7, see subsection 101-47.202-2(b)(9).

[53 FR 28984, Aug. 9, 1988]

§ 101-47.202-8 Notice of receipt.

GSA shall promptly notify the holding agency of the date of receipt of each Report of Excess Real Property (Standard Form 118).

§ 101-47.202-9 Expense of protection and maintenance.

When there are expenses connected with the protection and maintenance

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of the property reported to GSA, the notice to the holding agency of the date of receipt (see §101-47.202-8) will indicate, if determinable, the date that the provisions of §101-47.402-2 will become effective. Normally this will be the date of the receipt of the report. If because of actions of the holding agency the property is not available for immediate disposition at the time of receipt of the report, the holding agency will be reminded in the notice that the period of its responsibility for the expense of protection and maintenance will be extended by the period of the delay.

[49 FR 1348, Jan. 11, 1984]

§ 101-47.202-10 Examination for acceptability.

Each report of excess shall be reviewed by GSA to ascertain whether the report was prepared in accordance with the provisions of this section. Within fifteen calendar days after receipt of a report, the holding agency shall be informed by letter of the findings of GSA.

(a) Where it is found that a report is adequate to the extent that GSA can proceed with utilization and disposal actions for the property, the report shall be accepted and the holding agency shall be informed of the date of such acceptance. However, the holding agency shall, upon request, promptly furnish such additional information or documents relating to the property as may be required by GSA to accomplish a transfer or a disposal.

(b) Where it is found that a report is insufficient to the extent that GSA would be unable to proceed with any utilization or disposal actions for the property, the report shall be returned and the holding agency shall be informed of the facts and circumstances that required the return of the report. The holding agency promptly shall take such action as may be appropriate to submit an acceptable report to GSA. Should the holding agency be unable to submit an acceptable report, the property shall be removed from under the provisions of § 101-47.402-2.

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§ 101-47.203 Utilization.

§ 101-47.203-1 Reassignment of real property by the agencies.

Each executive agency shall, as far as practicable and within the policies expressed in this subpart 101-47.2, make reassignments of real property and related personal property under its control and jurisdiction among activities within the agency in lieu of acquiring such property from other sources.

[42 FR 40698, Aug. 11, 1977]

§ 101-47.203-2 Transfer and utilization.

Each executive agency shall, as far as practicable and within the policies expressed in this subpart 101-47.2, transfer excess real property under its control to other Federal agencies and to the organizations specified in §101-47.203-7, and shall fulfill its requirements for real property by obtaining excess real property from other Federal agencies. Transfers of property shall be made in accordance with the provisions of this subpart.

[42 FR 40698, Aug. 11, 1977]

§ 101-47.203-3 Notification of agency requirements.

Each executive agency shall notify the proper GSA regional office whenever real property is needed for an authorized program of the agency. The notice shall state the land area of the property needed, the preferred location or suitable alternate locations, and describe the type of property needed in sufficient detail to enable GSA to review its records of property that it knows will be reported excess by holding agencies, its inventory of excess property, and its inventory of surplus property, to ascertain whether any such property may be suitable for the needs of the agency. The agency shall be informed promptly by the GSA regional office as to whether or not any such property is available.

[33 FR 571, Jan. 17, 1968]

§ 101-47.203-4 Real property excepted from reporting.

Agencies having transferable excess real property and related personal property in the categories excepted from reporting by §101-47.202-4 shall,

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before disposal, satisfy themselves in a manner consistent with the provisions of this section that such property is not needed by other Government agencies.

§ 101-47.203-5 Screening of excess real property.

Excess real property and related personal property reported by executive agencies shall, unless such screening is waived, be screened by GSA for utilization by Federal real property holding agencies (listed in §101-47.4907), which may reasonably be expected to have use for the property as follows:

(a) Notices of availability will be submitted to each such agency which shall, within 30 calendar days from the date of notice, advise GSA if there is a firm requirement or a tentative requirement for the property. Agencies having tentative or firm requirements for surplus Federal real property for replacement housing for displaced persons, as authorized by section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902), shall review these notices for the additional purpose of identifying properties for which they may have such a requirement. When such a requirement exists, the agency shall so advise the appropriate GSA regional office.

(1) In the event a tentative requirement exists, the agency shall, within an additional 30 calendar days, advise GSA if there is a firm requirement.

(2) Within 60 calendar days after advice to GSA that a firm requirement exists, the agency shall furnish GSA a request for transfer of the property pursuant to §101-47.203-7.

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act; the Secretary of the Interior in connection with provisions in 16 U.S.C. 667b through d, the exercise of the authority vested under the provisions of section 203(k)(2) of the Act, or a determination under the provisions of section 203(k)(3) of the Act; and the Secretary of Housing and Urban Development in connection with the exercise of

the authority vested under the provisions of section 203(k)(6) of the Act will be sent to the offices designated by those officials to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General and the Director of the Federal Emergency Management Agency in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice; the Federal Emergency Management Agency; and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Housing and Urban Development, Justice, and Transportation, and the Federal Emergency Management Agency shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Federal agencies are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

(d) Concurrently with the 30-day Federal agency use screening period, those Federal agencies that sponsor public benefit disposals at less than fair market value as permitted by the statutory authorities in §101-47.4905 may provide the disposal agency with a recommendation, together with a brief supporting rationale, as illustrated in §101-47.4909, that the highest and best use of the property is for a specific public benefit purpose. The recommendation may be made by the agency head, or designee, and will be considered by the disposal agency in its final highest and best use analysis and determination. After a determination of surplus

has been made, if the disposal agency agrees with a sponsoring Federal agency that the highest and best use of a particular property is for a specific public benefit purpose, local public bodies will be notified that the property is available for that use.

[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 11438, June 12, 1971; 47 FR 37175, Aug. 25, 1982; 49 FR 37091, Sept. 21, 1984; 60 FR 35706, July 11, 1995; 64 FR 5615, Feb. 4, 1999]

§ 101-47.203-6 Designation as personal property.

(a) Prefabricated movable structures such as Butler-type storage warehouses, quonset huts, and housetrailer (with or without undercarriages) reported to GSA with the land on which they are located may, in the discretion of GSA, be designated for disposition as personal property for off-site use.

(b) Related personal property may, in the discretion of the disposal agency, be designated for disposition as personal property. Consideration of such designation shall be given particularly to items having possible historic or artistic value to ensure that Federal agencies, including the Smithsonian Institution (see § 101-43.302), are afforded the opportunity of obtaining them through personal property channels for off-site use for preservation and display. Fixtures such as murals and fixed sculpture which have exceptional historical or artistic value may be designated for disposition by severance for off-site use. In making such designations, consideration shall be given to such factors as whether the severance can be accomplished without seriously affecting the value of the realty and whether a ready disposition can be made of the severed fixtures.

(c) When a structure is to be demolished, any fixtures or related personal property therein may, at the discretion of the disposal agency, be designated for disposition as personal property where a ready disposition can be made of these items through such action. As indicated in paragraph (b) of this section, particular consideration should be given to designating items of possible historical or artistic value as personal property in such instances.

[34 FR 8166, May 24, 1969]

§ 101-47.203-7 Transfers.

(a) The agency requesting transfer of excess real property and related personal property reported to GSA shall prepare and submit to the proper GSA regional office GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property (§ 101-47.4904). Instructions for the preparation of GSA Form 1334 are set forth in § 101-47.4904-1.

(b) Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(c) [Reserved]

(d) Transfers of property to executive agencies shall be made when the proposed land use is consistent with the policy of the Administrator of General Services as prescribed in § 101-47.201-1 and the policy guidelines prescribed in § 101-47.201-2. In determining whether a proposed transfer should be approved under the policy guidelines, GSA and OMB may consult informally to obtain all available data concerning actual program needs for the property.

(e) GSA will execute or authorize all approved transfers to the requesting agency of property reported to GSA. Agencies may transfer without reference to GSA excess real property which is not reported to GSA under the provisions of § 101-47.202-4(b) (1), (2), and (4). However, such transfers shall be made in accordance with the principles set forth in this section.

(f) Pursuant to an agreement between the Director, Office of Management and Budget, and the Administrator of General Services, reimbursement for transfers of excess real property is prescribed as follows:

(1) Where the transferor agency has requested the net proceeds of the transfer pursuant to section 204 (c) of the Act, or where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841) or is a mixed-ownership

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Government corporation, or the municipal government of the District of Columbia, reimbursement for the transfer shall be in an amount equal to the estimated fair market value of the property requested as determined by the Administrator: *Provided*, That where the transferor agency is a wholly owned Government corporation, the reimbursement shall be either in an amount equal to the estimated fair market value of the property requested, or the corporation's book value thereof, as may be agreed upon by GSA and the corporation.

(2) Reimbursement for all other transfers of excess real property shall be:

(i) In an amount equal to 100 percent of the estimated fair market value of the property requested, as determined by the Administrator, or if the transfer is for the purpose of upgrading facilities (i.e., for the purpose of replacing other property of the transferee agency which because of the location, nature, or condition thereof, is less efficient for use), the reimbursement shall be in an amount equal to the difference between the estimated fair market value of the property to be replaced and the estimated fair market value of the property requested, as determined by the Administrator.

(ii) Without reimbursement when the transfer is to be made under either of the following conditions:

(A) Congress has specifically authorized the transfer without reimbursement, or

(B) The Administrator with the approval of the Director, Office of Management and Budget, has approved a request for an exception from the 100 percent reimbursement requirement.

(1) A request for exception from the 100 percent reimbursement requirement shall be endorsed by the head of the executive department or agency requesting the exception.

(2) A request for exception from the 100 percent reimbursement requirement will be submitted to GSA for referral to the Director, Office of Management and Budget, and shall include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive

Order 12348, dated February 25, 1982. The unavailability of funds alone is not sufficient to justify an exception. The above required data and documentation shall be attached to GSA Form 1334 by the transferee agency on submission of that form to GSA.

(3) If the Administrator with the approval of the Director, Office of Management and Budget, approves the request for an exception, the Administrator may then complete the transfer. A copy of the Office of Management and Budget approval will be sent to the Property Review Board.

(4) The agency requesting the exception will assume responsibility for protection and maintenance costs where the disposal of the property is deferred for more than 30 days because of the consideration of the request for an exception to the 100 percent reimbursement requirement.

(g) Excess property may be transferred to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction, pursuant to the provisions of section 602(e) of the Act. The amount of reimbursement for such transfer shall be the same as would be required for a transfer of excess property to an executive agency under similar circumstances.

(h) The transferor agency shall provide to the transferee agency all information held by the transferor concerning hazardous substance activity as outlined in § 101-47.202-2.

[29 FR 16126, Dec. 3, 1964, as amended at 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975; 42 FR 40698, Aug. 11, 1977; 47 FR 56499, Dec. 17, 1982; 49 FR 29222, July 19, 1984; 56 FR 15048, Apr. 15, 1991]

§ 101-47.203-8 Temporary utilization.

(a) Whenever GSA determines that the temporary assignment or reassignment to a Federal agency of any space in excess real property for office, storage, or related facilities would be more advantageous than the permanent transfer of the property to a Federal agency, it will execute or authorize such assignment or reassignment for such period of time as it shall determine. The agency to which the space is made available shall make appropriate reimbursement for the expense of

maintaining such space in the absence of appropriation available to GSA therefor.

(b) GSA may approve the temporary assignment or reassignment to a Federal agency of excess real property other than space for office, storage, or related facilities whenever such action would be in the best interest of the Government. In such cases, the agency to which the property is made available may be required to pay a rental or users charge based upon the fair value of such property, as determined by GSA. Where such property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at a time agreed upon when the transfer is arranged (see § 101-47.201-2(d)(7)).

§ 101-47.203-9 Non-Federal interim use of property.

The holding agency may, with the approval of GSA, grant rights for non-Federal interim use of excess property reported to GSA, or portions thereof, when it is determined that such interim use is not required for the needs of any Federal agency.

§ 101-47.203-10 Withdrawals.

Subject to the approval of GSA, and to such conditions as GSA considers appropriate, reports of excess real property may be withdrawn in whole or in part by the reporting agency at any time prior to transfer to another Federal agency or prior to the execution of a legally binding agreement for disposal as surplus property. Requests for withdrawals shall be addressed to the GSA regional office where the report of excess real property was filed.

[35 FR 17256, Nov. 6, 1970]

§ 101-47.204 Determination of surplus.

§ 101-47.204-1 Reported property.

Any real property and related personal property reported excess under this subpart 101-47.2 which has been screened for needs of Federal agencies or waived from such screening by GSA, and not been designated by GSA for utilization by a Federal agency, shall

be subject to determination as surplus property by GSA.

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Attorney General, the Director of the Federal Emergency Management Agency, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Act.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Secretary of Housing and Urban Development, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Director of the Federal Emergency Management Agency will be sent to the Federal Emergency Management Agency. The notices to the Secretary of Transportation will be sent to the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

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(c) With regard to surplus property which GSA predetermines will not be available for disposal under any of the statutes cited in §101-47.4905, or whenever the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act, the notice to the affected Federal agencies will contain advice of such determination or request for reimbursement. The affected Federal agencies shall not screen for potential applicants for such property.

[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 8041, Apr. 29, 1971; 47 FR 37175, Aug. 25, 1982; 60 FR 35706, July 11, 1995; 64 FR 5616, Feb. 4, 1999]

§ 101-47.204-2 Property excepted from reporting.

Any property not reported to GSA due to §101-47.202-4, and not designated by the holding agency for utilization by other agencies pursuant to the provisions of this subpart 101-47.2, shall be subject to determination as surplus by the holding agency.

Subpart 101-47.3—Surplus Real Property Disposal

§ 101-47.300 Scope of subpart.

This subpart prescribes the policies and methods governing the disposal of surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by subpart 101-47.5).

[47 FR 4522, Feb. 1, 1982]

§ 101-47.301 General provisions of subpart.

§ 101-47.301-1 Policy.

It is the policy of the Administrator of General Services:

(a) That surplus real property shall be disposed of in the most economical manner consistent with the best interests of the Government.

(b) That surplus real property shall ordinarily be disposed of for cash consistent with the best interests of the Government.

(c) That surplus real property shall be disposed of by exchange for privately owned property only for property management considerations such as boundary realignment or provision of access or in those situations in which the acquisition is authorized by law, the requesting Federal agency has received approval from the Office of Management and Budget and clearance from its congressional oversight committees to acquire by exchange, and the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other method of acquisition.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 47205, Sept. 20, 1977; 42 FR 56123, Oct. 21, 1977]

§ 101-47.301-2 Applicability of anti-trust laws.

(a) In any case in which there is contemplated a disposal to any private interest of real and related personal property which has an estimated fair market value of \$3,000,000 or more, or of patents, processes, techniques, or inventions, irrespective of cost, the disposal agency shall transmit promptly to the Attorney General notice of any such proposed disposal and the probable terms or conditions thereof, as required by section 207 of the Act, for his advice as to whether the proposed disposal would tend to create or maintain a situation inconsistent with antitrust laws, and no such real property shall be disposed of until such advice has been received. If such notice is given by any executive agency other than GSA, a copy of the notice shall be transmitted simultaneously to the office of GSA for the region in which the property is located.

(b) Upon request of the Attorney General, GSA or any other executive agency shall furnish or cause to be furnished such information as it may possess which the Attorney General determines to be appropriate or necessary to enable him to give the requested advice

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or to determine whether any other disposition or proposed disposition of surplus real property violates or would violate any of the antitrust laws.

[29 FR 16126, Dec. 3, 1964, as amended at 54 FR 12198, Mar. 24, 1989]

§ 101-47.301-3 Disposals under other laws.

Pursuant to section 602(c) of the act, disposals of real property shall not be made under other laws but shall be made only in strict accordance with the provisions of this subpart 101-47.3 unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which disposal is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to disposals of real property authorized to be made by section 602(d) of the act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

§ 101-47.301-4 Credit disposals and leases.

Where credit is extended in connection with any disposal of surplus property, the disposal agency shall offer credit pursuant to the provisions of § 101-47.304-4. The disposal agency shall administer and manage the credit lease, or permit and any security therefor and may enforce, adjust, or settle any right of the Government with respect thereto in such manner and upon such terms as that agency considers to be in the best interests of the Government.

[42 FR 47205, Sept. 20, 1977]

§ 101-47.302 Designation of disposal agencies.

§ 101-47.302-1 General.

In accordance with applicable provisions of this subpart 101-47.3, surplus real property shall be disposed of or assigned to the appropriate Federal de-

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partment for disposal for public use purposes by the disposal agency.

[36 FR 8042, Apr. 29, 1971]

§ 101-47.302-2 Holding agency.

(a) The holding agency is hereby designated as disposal agency for:

(1) Leases, permits, licenses, easements, and similar real estate interests held by the Government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(2) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land with the exception of Government-owned machinery and equipment, which are fixtures being used by a contractor-operator, where such machinery and equipment will be sold to the contractor-operator.

(3) Standing timber and embedded gravel, sand, stone and underground water to be disposed of without the underlying land.

(b) GSA may act as the disposal agency for the type of property described in paragraphs (a) (1) and (2) of this section, whenever requested by the holding agency to perform the disposal functions. Where GSA acts as the disposal agency for the disposal of leases and similar real estate interests as described in paragraph (a)(1) of this section, the holding agency nevertheless shall continue to be responsible for the payment of the rental until the lease is terminated and for the payment of any restoration or other direct costs incurred by the Government as an incident to the termination. Likewise, where GSA acts as disposal agency for the disposal of fixtures, structures, and improvements as described in paragraph (a)(2) of this section, the holding agency nevertheless shall continue to

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be responsible for payment of any demolition and removal costs not offset by the sale of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 2658, Feb. 11, 1966; 31 FR 16780, Dec. 31, 1966; 33 FR 8737, June 14, 1968; 48 FR 12526, Mar. 25, 1983; 50 FR 28403, July 12, 1985]

§ 101-47.302-3 General Services Administration.

GSA is the disposal agency for all real property and related personal property not covered by the above designations or by disposal authority delegated by the Administrator of General Services in specific instances.

§ 101-47.303 Responsibility of disposal agency.

§ 101-47.303-1 Classification.

Each surplus property, or, if the property is subdivided, each unit of property shall be classified by the disposal agency to determine the methods and conditions applicable to the disposal of the property. Classification shall be according to the estimated highest and best use for the property. The property may be reclassified from time to time by the disposal agency or by GSA whenever such action is deemed appropriate.

§ 101-47.303-2 Disposals to public agencies.

The disposal agency shall comply with the provisions of Executive Order 12372 and 41 CFR subpart 101-6.21, which enables a State to establish the single point of contact process or other appropriate procedures to review and comment on the compatibility of a proposed disposal with State, regional and local development plans and programs. When a single point of contact transmits a State review process recommendation, the Federal agency receiving the recommendation must either accept the recommendation; reach a mutually agreeable solution with the party(s) preparing the recommendation; or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the agency is generally required to wait 10 calendar days after receipt, by

the single point of contact, of an explanation before taking final action. The single point of contact is presumed to have received written notification 5 calendar days after the date of mailing of such notification. The 10-day waiting period may be waived if the agency determines that because of unusual circumstances this delay is not feasible.

(a) Whenever property is determined to be surplus, the disposal agency shall, on the basis of the information given in §101-47.4905, list the public agencies eligible under the provisions of the statutes referred to above to procure the property or portions thereof, except that such listing need not be made with respect to:

(1) Any such property when the determination of the property as surplus is conditioned upon disposal limitations which would be inconsistent with disposal under the statutes authorizing disposal to eligible public agencies; or

(2) Any such property having an estimated fair market value of less than \$1,000 except where the disposal agency has any reason to believe that an eligible public agency may be interested in the property.

(b) Before public advertising, negotiation, or other disposal action, the disposal agency shall give notice to eligible public agencies that the property has been determined surplus. Surplus real property may be procured by public agencies under the statutes cited in §101-47.4905. A notice to public agencies of surplus determination shall be prepared following the sample shown in §101-47.4906. This notice shall be transmitted by a letter prepared following the sample shown in §101-47.4906-1. A copy of this notice shall also be sent simultaneously to the State single point of contact, under a covering letter prepared following the sample shown in §101-47.4906-2. The point of contact shall be advised that no final disposal action will be taken for 60 calendar days from the date of notification to allow time for the point of contact to provide any desired comments. The disposal agency will wait the full 60 calendar days, even if the comments are received early, to allow time for the point of contact to send additional or revised comments.

(1) Notice for property located in a State shall be given to the Governor of the State, to the county clerk or other appropriate officials of the county in which the property is located, to the mayor or other appropriate officials of the city or town in which the property is located, to the head of any other local governmental body known to be interested in and eligible to acquire the property, and to the point of contact established by the State or under other appropriate procedures established by the State.

(2) Notice for property located in the District of Columbia shall be given to the Mayor of the District of Columbia and to the point of contact established by the District of Columbia or under other appropriate procedures established by the District of Columbia.

(3) Notice for property located in the Virgin Islands shall be given to the Governor of the Virgin Islands and to the point of contact established by the Virgin Islands or under other appropriate procedures established by the Virgin Islands.

(4) Notice for property located in the Commonwealth of Puerto Rico shall be given to the Governor of the Commonwealth of Puerto Rico and to the point of contact established by the Commonwealth of Puerto Rico or under other appropriate procedures established by the Commonwealth of Puerto Rico.

(c) The notice prepared pursuant to § 101-47.303-2(b) shall also be posted in the post office which serves the area in which the property is located and in other prominent places such as the State capitol building, county building, courthouse, town hall, or city hall. The notice to be posted in the post office shall be mailed to the postmaster with a request that it be posted. Arrangements for the posting of the notice in other prominent places shall be as provided for in the transmittal letters (see § 101-47.4906-1) to eligible public agencies.

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the appropriate regional or field offices of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration, the Federal Highway

Administration, and the Maritime Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statutes named in the notice.

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED), the Secretary of the Interior (DOI), or the Secretary of Housing and Urban Development (HUD) for disposal under sections 203(k)(1), (2), or (6) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED, NPS, or HUD 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED, NPS, or HUD to additional interested public bodies and/or non-profit institutions.

(2) The disposal agency shall furnish the Federal agencies with a copy of the postdated transmittal letter addressed to each public agency, copies (not to exceed 25) of the postdated notice, and a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(3) As of the date of the transmittal letter and notice to public agencies, the affected Federal agencies may proceed with their screening functions for any potential applicants and thereafter may make their determinations of need and receive applications.

(f) If the disposal agency is not informed within the 20- or 30-calendar day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in § 101-47.4905, or is not notified by ED or HHS of a potential educational or public health use, or is not notified by the DOI of a potential park or recreation, historic monument, or wildlife conservation use, or is not notified by the HUD of a potential self-help housing or housing assistance requirement, or is not notified by the Department of Justice of a potential correctional facilities or law enforcement use, or is not notified by the Federal Emergency Management Agency of a

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potential emergency management response use; or is not notified by the Department of Transportation of a potential port facility or public airport use, it shall be assumed that no public agency or otherwise eligible organization desires to procure the property. (The requirements of this §101-47.303-2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

- (1) National Park Service, Department of the Interior;
- (2) Department of Health and Human Services;
- (3) Department of Education;
- (4) Department of Housing and Urban Development;
- (5) Federal Aviation Administration, Department of Transportation;
- (6) Fish and Wildlife Service, Department of the Interior;
- (7) Federal Highway Administration, Department of Transportation;
- (8) Office of Justice Programs, Department of Justice;
- (9) Federal Emergency Management Agency; and
- (10) Maritime Administration, Department of Transportation.

(h) When the disposal agency has made a determination as to what con-

stitutes a reasonable period of time to develop and submit a formal application, the public agency shall be so notified. The public agency shall be advised of the information required in connection with an application to procure the property.

(i) Upon receipt of the formal application for the property, the disposal agency shall consider and act upon it in accordance with the provisions of the statute and applicable regulations. If comments are received indicating that the disposal is incompatible with State, regional, or local development plans and programs, the disposal agency shall attempt to resolve the differences consistent with its statutory responsibilities in the disposal of surplus property.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 11209, July 3, 1969; 35 FR 8486, June 2, 1970; 36 FR 9776, May 28, 1971; 40 FR 22256, May 22, 1975; 52 FR 9829, Mar. 27, 1987; 60 FR 35707, July 11, 1995; 64 FR 5616, Feb. 4, 1999]

§ 101-47.303-2a Notice for zoning purposes.

(a) Where the surplus land is located in an urban area as defined in section 806 of the Act, that copy of the notice to public agencies required under §101-47.303-2(b) which is sent to the head of the local governmental unit having jurisdiction over zoning and land use regulation in the area shall be accompanied by a copy of section 803 of the Act (see §101-47.4906a) and the transmittal letter in such instances shall include an additional paragraph requesting information concerning zoning as set forth in §101-47.4906b.

(b) Information which is furnished by the unit of general local government pursuant to the action taken in paragraph (a) of this section shall be included in Invitations for Bid in advertised sales. In negotiated sales, this information shall be presented to prospective purchasers during the course of the negotiations and shall be included in the sales agreements. In either instance, this information shall be followed by a written statement, substantially as follows:

The above information was obtained from _____ and is furnished pursuant to section 803 of the Federal Property and Administrative Services Act of 1949, as

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amended. The Government does not guarantee that the information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the above information shall not be cause for adjustment or rescission of any contract resulting from this Invitation for Bid or Sales Agreement.

(c) If no response to a request for such zoning information is received, the property may be offered for sale without furnishing such information to prospective purchasers. If the unit of general local government notifies the disposal agency of its desire to zone the property, it shall be afforded a 30-calendar-day period (in addition to the 20-calendar days afforded in the notice of surplus determination) to issue such zoning regulations. If the zoning cannot be accomplished within this time frame, the sale may proceed but the prospective purchasers shall be advised of the pending zoning of the property.

[34 FR 11209, July 3, 1969]

§ 101-47.303-3 Studies.

The disposal agency shall compile from the title documents and related papers appropriate information, for use in disposal actions, regarding all real property and related personal property available for disposal.

§ 101-47.303-4 Appraisal.

(a) Except as otherwise provided in this subpart 101-47.3, the disposal agency shall in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(b) *No appraisal need be obtained.* (1) When the property is to be disposed of without monetary consideration, or at a fixed price, or

(2) When the estimated fair market value of property to be offered on a competitive sale basis does not exceed \$50,000;

Provided, however, That the exception in paragraph (b)(1) of this section shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

(c) The disposal agency shall have the property appraised by experienced and qualified persons familiar with the types of property to be appraised by

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them. If the property is included in or eligible for inclusion on the National Register of Historic Places, the appraisal should consider the effect of historic covenants on fair market value.

(d) *Appraisal confidentiality.* Appraisals, appraisal reports, appraisal analyses, and other pre-decisional documents obtained in accordance with this subpart are confidential and for the use of authorized personnel of Government agencies having a need for such information. Further, such information shall not be divulged prior to the delivery and acceptance of the deed. Any person engaged to collect or evaluate information pursuant to this paragraph shall certify that there is no interest, direct or indirect, in the property which would conflict in any manner with the preparation and submission of an impartial appraisal report.

[29 FR 16126, Dec. 3, 1964, as amended at 55 FR 41189, Oct. 10, 1990; 64 FR 31732, June 14, 1999]

§ 101-47.304 Advertised and negotiated disposals.

§ 101-47.304-1 Publicity.

(a) The disposal agency shall widely publicize all surplus real property and related personal property which becomes available for disposal hereunder, giving information adequate to inform interested persons of the general nature of the property and its possible uses, as well as any reservations, restrictions, and conditions imposed upon its disposal.

(b) A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of the property is less than \$2,500, shall be prepared and submitted, for inclusion in the U.S. Department of Commerce publication "Commerce Business Daily," to: U.S. Department of Commerce (S-Synopsis), room 1300, 433 West Van Buren Street, Chicago, Illinois 60604.

§ 101-47.304-2 Soliciting cooperation of local groups.

The disposal agency may consult with local groups and organizations and solicit their cooperation in giving

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wide publicity to the proposed disposal of the property.

§ 101-47.304-3 Information to interested persons.

The disposal agency shall, upon request, supply to bona fide potential purchasers and lessees adequate preliminary information, and, with the cooperation of the holding agency where necessary, shall render such assistance to such persons as may enable them, insofar as feasible, to obtain adequate information regarding the property. The disposal agency shall establish procedures so that all persons showing due diligence are given full and complete opportunity to make an offer.

§ 101-47.304-4 Invitation for offers.

In all advertised and negotiated disposals, the disposal agency shall prepare and furnish to all prospective purchasers or lessees written invitations to make an offer, which shall contain or incorporate by reference all the terms and conditions under which the property is offered for disposal, including all provisions required by statute to be made a part of the offer. The invitation shall further specify the form of the disposal instrument, which specifications shall be in accordance with the appropriate provisions of §§ 101-47.307-1 and 101-47.307-2.

(a) When the disposal agency has determined that the sale of specific property on credit terms is necessary to avoid retarding the salability of the property and the price obtainable, the invitation shall provide for submission of offers on the following terms:

(1) Offers to purchase of less than \$2,500 shall be for cash.

(2) When the purchase price is \$2,500 or more but less than \$10,000, a cash downpayment of not less than 25 percent shall be required with the balance due in 8 years or less.

(3) When the purchase price is \$10,000 or more, a cash downpayment of not less than 20 percent shall be required with the balance due in 10 years or less.

(4) The purchaser shall furnish a promissory note secured by the purchase money mortgage or deed of trust on the property, whichever the Government determines to be appropriate.

(5) Payment will be in equal quarterly installments of the principal together with interest on the unpaid balance.

(6) Interest on the unpaid balance will be at the General Services Administration's established interest rate.

(b) Where the disposal agency has determined that an offering of the property on credit terms that do not meet the standards set forth in § 101-47.304-4(a) is essential to permit disposal of the property in the best interests of the Government, the invitation may provide for submission of offers on such alternate terms of payment as may be recommended by the disposal agency and approved by the Administrator of General Services on the basis of a detailed written statement justifying the need to deviate from the standard terms. The justification shall be based on the needs of the Federal Government as distinguished from the interests of the purchaser. The sale in those cases where the downpayment is less than 20 percent shall, unless otherwise authorized by the Administrator of General Services, be under a land contract which shall provide, in effect, for conveyance of title to the purchaser by quitclaim deed or other form of conveyance in accordance with the appropriate provisions of §§ 101-47.307-1 and 101-47.307-2 upon payment of one-third of the total purchase price and accrued interest, or earlier if the Government so elects, and execution and delivery of purchaser's note and purchase money mortgage (or bond and deed of trust) satisfactory to the Government, to secure payment of the unpaid balance of the purchase price.

(c) The disposal agency may increase the cash downpayment requirement or shorten the period of amortization whenever circumstances warrant and in the case of sales of farms, may provide for payment of the unpaid balance on equal semiannual or annual installment basis.

(d) Where a sale is to be made on credit, the invitation shall provide that the purchaser agrees by appropriate provisions to be incorporated in the disposal instruments that he will not lease (unless the property was offered without leasing restrictions by the Government) or sell the property, or

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any part thereof or interest therein, without prior written authorization of the Government.

(1) In appropriate cases, except as provided in §101-47.304-4(d)(2), the invitation shall state that the disposal instrument may include provisions specifically authorizing leasing and/or resale and release of portions of the property as desired by the purchaser, provided that such provisions shall, in the judgment of the Government, be adequate to protect its security for the credit extended to the purchaser.

(2) In the case of timber or mineral lands, or lands containing other saleable products, the invitation shall state that the disposal instrument may specifically provide for granting future partial releases to permit the resale of timber, minerals, and other saleable products, or authorize the leasing of mineral rights, upon payment to the Government of such amounts as may be required by the Government but not less than the proceeds of any sale or lease less such amounts as may be determined by the Government to represent the cost of the sale or lease.

(3) All payments for such authorizations and/or releases shall, at the option of the Government, be applied against the unpaid balance of the indebtedness in inverse order of its maturity, or upon any delinquent installments of principal and interest, or used for payments of any delinquent taxes or insurance premiums.

(e) Where property is offered for disposal under a land contract or lease, the terms and conditions contained in the invitation shall provide that the purchaser or lessee will be required to pay to the proper taxing authorities or to the disposal agency, as may be directed, all taxes, payments in lieu of taxes (in the event of the existence or subsequent enactment of legislation authorizing such payments), assessments or similar charges which may be assessed or imposed on the property, or upon the occupier thereof, or upon the use or operation of the property and to assume all costs of operating obligations.

(f) Whenever property is offered for sale on credit terms or for lease, the terms and conditions contained in the invitation shall provide that the pur-

chaser or lessee shall procure and maintain at his expense during the term credit is extended, or the period of the lease, such insurance in such amounts as may be required by the Government; required insurance shall be in companies acceptable to the Government and shall include such terms and provisions as may be required to provide coverage satisfactory to the Government.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 12003, Aug. 23, 1968; 42 FR 47205, Sept. 20, 1977]

§ 101-47.304-5 Inspection.

All persons interested in the acquisition of surplus property available for disposal under this subpart 101-47.3 shall, with the cooperation of the holding agency, where necessary, and with due regard to its program activities, be permitted to make a complete inspection of such property, including any available inventory records, plans, specifications, and engineering reports made in connection therewith, subject to any necessary restrictions in the interest of national security and subject to such rules as may be prescribed by the disposal agency.

(See §§101-47.304-13 and 101-47.403.)

[53 FR 29894, Aug. 9, 1988]

§ 101-47.304-6 Submission of offers.

All offers to purchase or lease shall be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency and, in addition to the financial terms upon which the offer is predicated, shall set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and shall contain such other information as the disposal agency may request.

§ 101-47.304-7 Advertised disposals.

(a) All disposals or contracts for disposal of surplus property, except as provided in §§101-47.304-9 and 101-47.304-10, shall be made after publicly advertising for bids.

(1) The advertising for bids shall be made at such time previous to the disposal or contract, through such methods and on such terms and conditions

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as shall permit that full and free competition which is consistent with the value and nature of the property involved. The advertisement shall designate the place to which the bids are to be delivered or mailed, and shall state the place, date, and time of public opening.

(2) All bids shall be publicly disclosed at the time and place stated in the advertisement.

(3) Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided*, That all bids may be rejected when it is in the public interest to do so.

(b) Disposal and contracts for disposal of surplus property may be made through contract auctioneers when authorized by GSA. The auctioneer retained under contract shall be required to publicly advertise for bids in accordance with the applicable provisions of this § 101-47.304-7.

§ 101-47.304-8 [Reserved]

§ 101-47.304-9 Negotiated disposals.

(a) Disposal agencies shall obtain such competition as is feasible under the circumstances in all negotiations of disposals and contracts for disposal of surplus property. They may dispose of surplus property by negotiation only in the following situations:

(1) When the estimated fair market value of the property involved does not exceed \$15,000;

(2) When bid prices after advertising therefor are not reasonable (either as to all or some part of the property) or have not been independently arrived at in open competition;

(3) When the character or conditions of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation;

(4) When the disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market

value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(5) When negotiation is otherwise authorized by the Act or other law, such as:

(i) Disposals of power transmission lines for public or cooperative power projects (see § 101-47.308-1).

(ii) Disposals for public airport utilization (see § 101-47.308-2).

(b) Appraisal data required pursuant to the provisions of § 101-47.303-4, when needed for the purpose of conducting negotiations under § 101-47.304-9(a) (3), (4), or (5)(i) shall be obtained under contractual arrangements with experienced and qualified real estate appraisers familiar with the types of property to be appraised by them: *Provided, however*, That in any case where the cost of obtaining such data from a contract appraiser would be out of proportion to the expected recoverable value of the property, or if for any other reason employing a contract appraiser would not be in the best interest of the Government, the head of the disposal agency or his designee should authorize any other method of obtaining an estimate of the fair market value of the property or the fair annual rental he may deem to be proper.

(c) Negotiated sales to public bodies under 40 U.S.C. 484(e)(3)(H) will be considered only when the disposal agency has made a determination that a public benefit will result from the negotiated sale which would not be realized from a competitive sale disposal. The offer to purchase and the conveyance document concerning such negotiated sales shall contain an excess profits covenant. A standard Excess Profits Covenant for Negotiated Sales to Public Bodies is illustrated in § 101-47.4908. The standard covenant is provided as a guide, and appropriate modifications may be made provided that its basic purpose is retained. The disposal agency shall monitor the property involved and inspect records related thereto as necessary to ensure compliance with the terms and conditions of the sale and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

(d) The annual report of the Administrator under section 212 of the Act shall contain or be accompanied by a listing and description of any negotiated disposals of surplus real property having an estimated fair market value of over \$15,000, other than disposals for which an explanatory statement has been transmitted under §101-47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 40 FR 22256, May 22, 1975; 51 FR 23760, July 1, 1986; 54 FR 12198, Mar. 24, 1989]

§ 101-47.304-10 Disposals by brokers.

Disposals and contracts for disposal of surplus property through contract realty brokers, where authorized by GSA, shall be made in the manner followed in similar commercial transactions. Realty brokers retained under contracts shall be required to give wide public notice of availability of the property for disposal.

§ 101-47.304-11 Documenting determinations to negotiate.

The disposal agency shall document the factors leading to and the determination justifying disposal by negotiation of any surplus property under §§101-47.304-9 and 101-47.304-10, and shall retain such documentation in the files of the agency.

§ 101-47.304-12 Explanatory statements.

(a) Subject to the exception stated in §101-47.304-12(b), the disposal agency shall prepare an explanatory statement, as required by section 203(e)(6) of the Act, of the circumstances of each of the following proposed disposals by negotiation:

(1) Any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange shall only be subject to paragraphs (a) (2) through (4) of this section;

(2) Any real property disposed of by lease for a term of 5 years or less; if the estimated fair annual rent is in excess of \$100,000 for any of such years;

(3) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of \$100,000; or

(4) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(b) No explanatory statement need be prepared for a disposal of property authorized to be disposed of without advertising by any provision of law other than section 203(e) of the Act.

(c) An outline for the preparation of the explanatory statement is shown in §101-47.4911. A copy of the statement shall be preserved in the files of the disposal agency.

(d) Each explanatory statement when prepared shall be submitted to the Administrator of General Services for review and transmittal by the Administrator of General Services by letters to the Committees on Government Operations and any other appropriate committees of the Senate and House of Representatives. The submission to the Administrator of General Services shall include such supporting data as may be relevant and necessary for evaluating the proposed action.

(e) Copies of the Administrator of General Services' transmittal letters to the committees of the Congress, §101-47.304-12(d), will be furnished to the disposal agency.

(f) In the absence of adverse comment by an appropriate committee or subcommittee of the Congress on the proposed negotiated disposal, the disposal agency may consummate the sale on or after 35 days from the date of the Administrator of General Services letters transmitting the explanatory statement to the committees.

[29 FR 16126, Dec. 3, 1964, as amended at 41 FR 22354, June 3, 1976; 54 FR 12198, Mar. 24, 1989]

§ 101-47.304-13 Provisions relating to asbestos.

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with §101-47.202-2)(b)(9), the disposal agency shall incorporate such information (less any cost or time estimates to remove the asbestos-containing materials) in any Invitation for Bids/Offer to Purchase and include the following:

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NOTICE OF THE PRESENCE OF ASBESTOS— WARNING!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the

Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

[53 FR 29894, Aug. 9, 1988]

§ 101-47.304-14 Provisions relating to hazardous substance activity.

(a) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with §101-47.202-2(b)(10), the disposal agency shall incorporate such information into any Invitation for Bids/Offer to Purchase and include the following statements:

Notice regarding hazardous substance activity:

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h).

The (holding agency) advises that (provide information on the type and quantity of hazardous substances; the time at which storage, release, or disposal took place; and a description of the remedial action taken).

All remedial action necessary to protect human health and the environment with respect to the hazardous substance activity during the time the property was owned by the United States has been taken. Any additional remedial action found to be necessary shall be conducted by the United States.

(b) In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the above statements must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

[56 FR 15048, Apr. 15, 1991]

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§ 101-47.305 Acceptance of offers.

disposal under other applicable provisions of this subpart 101-47.3.

§ 101-47.305-1 General.

[29 FR 16126, Dec. 3, 1964, as amended at 50 FR 25223, June 18, 1985]

(a) When the head of the disposal agency or his designee determines that bid prices (either as to all or some part of the property) received after advertising therefor or received in response to the action authorized in paragraph (b) of this §101-47.305-1, are reasonable, i.e., commensurate with the fair market value of the property, and were independently arrived at in open competition, award shall be made with reasonable promptness by notice to the bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. Any or all offers may be rejected when the head of the disposal agency or his designee determines it is in the public interest to do so.

§ 101-47.305-2 Equal offers.

Equal offers means two or more offers that are equal in all respects, taking into consideration the best interests of the Government. If equal acceptable offers are received for the same property, award shall be made by a drawing by lot limited to the equal acceptable offers received.

§ 101-47.305-3 Notice to unsuccessful bidders.

When an offer for surplus real property has been accepted, the disposal agency shall notify all other bidders of such acceptance and return their earnest money deposits, if any.

(b) Where the advertising does not result in the receipt of a bid at a price commensurate with the fair market value of the property, the highest bidder may, at the discretion of the head of the disposal agency or his designee and upon determination of responsiveness and bidder responsibility, be afforded an opportunity to increase his offered price. The bidder shall be given a reasonable period of time, not to exceed fifteen working days, to respond. At the time the bidder is afforded an opportunity to increase his bid, all other bids shall be rejected and bid deposits returned. Any sale at a price so increased may be concluded without regard to the provisions of §101-47.304-9 and §101-47.304-12.

§ 101-47.306 Absence of acceptable offers.

§ 101-47.306-1 Negotiations.

(c) The disposal agency shall allow a reasonable period of time within which the successful bidder shall consummate the transaction and shall notify the successful bidder of the period allowed.

(d) It is within the discretion of the head of the disposal agency or his designee to determine whether the procedure authorized by paragraph (b) of this §101-47.305-1 is followed or whether the bids shall be rejected and the property reoffered for sale on a publicly advertised competitive bid basis in accordance with the provisions of §101-47.304-7, or disposed of by negotiation pursuant to §101-47.306-1, or offered for

(a) When the head of the disposal agency or his designee determines that bid prices after advertising therefor (including the action authorized by the provisions of §101-47.305-1(b)) are not reasonable either as to all or some part of the property or were not independently arrived at in open competition and that a negotiated sale rather than a disposal by readvertising or under other applicable provisions of this subpart would better protect the public interest, the property or such part thereof may be disposed of by negotiated sale after rejection of all bids received: *Provided*, That no negotiated disposal may be made under this §101-47.306-1 unless:

(1) Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head or his designee to each responsible bidder who submitted a bid pursuant to the advertising;

(2) The negotiated price is higher than the highest rejected bid price offered by any responsible bidder, as determined by the head of the agency or his designee; and

(3) The negotiated price is the highest negotiated price offered by any responsible prospective purchaser.

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(b) Any such negotiated disposal shall be subject to the applicable provisions of §§ 101-47.304-9 and 101-47.304-12.

§ 101-47.306-2 Defense Industrial Reserve properties.

In the event that any disposal agency is unable to dispose of any surplus industrial plant because of the application of the conditions and restrictions of the National Security Clause imposed under the Defense Industrial Reserve Act (50 U.S.C. 453), after making every practicable effort to do so, it shall notify the Secretary of Defense, indicating such modifications in the National Security Clause, if any, which in its judgment will make possible the disposal of the plant. Upon agreement by the Secretary of Defense to any or all of such modifications, the plant shall be reoffered for disposal subject to such modifications as may have been so agreed upon; or if such modifications are not agreed to, and upon request of the Secretary of Defense, the plant shall be transferred to the custody of GSA.

[40 FR 12078, Mar. 17, 1975]

§ 101-47.307 Conveyances.

§ 101-47.307-1 Form of deed or instrument of conveyance.

Disposals of real property shall be by quitclaim deed or deed without warranty in conformity with local law and practice, unless the disposal agency finds that another form of conveyance is necessary to obtain a reasonable price for the property or to render the title marketable, and unless the use of such other form of conveyance is approved by GSA.

§ 101-47.307-2 Conditions in disposal instruments.

(a) Where a sale is made upon credit, the purchaser shall agree by appropriate provisions to be incorporated in the disposal instruments, that he will not resell or lease (unless due to its character or type the property was offered without leasing restrictions by the disposal agency) the property, or any part thereof or interest therein, without the prior written authorization of the disposal agency and such disposal instruments in appropriate

cases may specifically provide for such authorization and/or future partial releases to be granted on terms which will adequately protect the Government's security for the credit extended to the purchaser.

(b) Except for exchange transactions initiated by the Federal Government for its own benefit, any disposition of land, or land and improvements located thereon, to public bodies by negotiation pursuant to § 101-47.304-9(4) shall include in the deed or other disposal instrument a covenant substantially as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

(c) Any deed, lease, or other instrument executed to dispose of property under this subpart, subject to reservations, restrictions, or conditions as to the future use, maintenance, or transfer of the property shall recite all covenants, representations, and agreements pertaining thereto.

(d) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with § 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any deed, lease, or other instrument executed pursuant to part 101-47. See the language contained in § 101-47.304-14. In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the language must be modified as appropriate to properly represent

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the liability of the PRP for any remedial action.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 4408, Mar. 12, 1968; 56 FR 15049, Apr. 15, 1991]

§ 101-47.307-3 Distribution of conformed copies of conveyance instruments.

(a) Two conformed copies of any deed, lease, or other instrument containing reservations, restrictions, or conditions regulating the future use, maintenance, or transfer of the property shall be provided the agency charged with enforcement of such reservations, restrictions, or conditions.

(b) A conformed copy of the deed, lease, or other conveyance instrument shall be provided to the holding agency by the disposal agency.

§ 101-47.307-4 Disposition of title papers.

The holding agency shall, upon request, deliver to the disposal agency all title papers in its possession relating to the property reported excess. The disposal agency may transfer to the purchaser of the property, as a part of the disposal transaction, the pertinent records authorized by §101-11.404-2, to be so transferred. If the purchaser of the property wishes to obtain additional records, copies thereof may be furnished to the purchaser at an appropriate charge, as determined by the agency having custody of the records.

[33 FR 572, Jan. 17, 1968]

§ 101-47.307-5 Title transfers from Government corporations.

In order to facilitate the administration and disposition of real property when record title to such property is not in the name of the United States of America, the holding agency, upon request of the Administrator of General Services, shall deliver to the disposal agency a quitclaim deed, or other instrument of conveyance without warranty, expressed or implied, transferring all of the right, title, and interest of the holding agency in such property to the United States of America.

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§ 101-47.307-6 Proceeds from disposals.

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 204(b)-(e) of the Act (40 U.S.C. 485(b)-(e)), or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation act) hereafter received from any sale, lease, or other disposition of surplus real property and related personal property shall be covered into the land and water conservation fund in the Treasury of the United States.

[30 FR 754, Jan. 23, 1965]

§ 101-47.308 Special disposal provisions.

§ 101-47.308-1 Power transmission lines.

(a) Pursuant and subject to the provisions of section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)), which is continued in effect by section 602(a) of the Federal Property and Administrative Services Act of 1949, any State or political subdivision thereof, or any State or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needful for or adaptable to the requirements of a public or cooperative power project. Disposal agencies shall notify such State entities and Government agencies of the availability of such property in accordance with §101-47.303-2.

(b) Notwithstanding any other provisions of this subpart, whenever a State or political subdivision thereof, or a State or Government agency or instrumentality certifies that such property is needful for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at the fair market value thereof.

(c) In the event a sale cannot be accomplished by reason of the price to be charged or otherwise and the certification is not withdrawn, the disposal agency shall report the facts involved to the Administrator of General Services, for a determination by him as to

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the further action to be taken to dispose of the property.

(d) Any power transmission line and right-of-way not disposed of pursuant to the provisions of this section shall be disposed of in accordance with other applicable provisions of this subpart, including, if appropriate, reclassification by the disposal agency.

§ 101-47.308-2 Property for public airports.

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

(b) The disposal agency shall notify eligible public agencies, in accordance with the provisions of § 101-47.303-2, that property which may be disposed of for use as a public airport under the Act of 1944, as amended, has been determined to be surplus. There shall be transmitted with the copy of each such notice when sent to the proper regional office of the Federal Aviation Administration, § 101-47.303-2(d), a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) As promptly as possible after receipt of the copy of the notice given to eligible public agencies and the copy of Standard Form 118, the Federal Aviation Administration shall inform the disposal agency of the determination of the Administrator of the Federal Aviation Administration required by the provisions of the Act of 1944, as amended. The Federal Aviation Administration, thereafter, shall render such assistance to any eligible public agency known to have a need for the property for a public airport as may be necessary for such need to be considered in the development of a comprehensive and coordinated plan of use and procurement for the property. An application form and instructions for the preparation of an application shall be furnished to the eligible public agency by the disposal agency upon request.

(d) Whenever an eligible public agency has submitted a plan of use and application to acquire property for a public airport, in accordance with the provisions of § 101-47.303-2, the disposal agency shall transmit two copies of the plan and two copies of the application to the proper regional office of the Federal Aviation Administration. The Federal Aviation Administration shall promptly submit to the disposal agency a recommendation for disposal of the property for a public airport or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of such recommendation, the disposal agency may, with the approval of the head of the disposal agency or his designee, convey property recommended by the Federal Aviation Administration for disposal for a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended. Approval for aviation areas shall be based on established FAA guidelines, criteria, and requirements for such areas. Approval for nonaviation revenue-producing areas shall be given only for such areas as are anticipated to generate net proceeds which do not exceed expected deficits for operation of the aviation area applied for at the airport.

(f) Any airport property not recommended by the Federal Aviation Administration for disposal pursuant to the provisions of this subsection for use as a public airport shall be disposed of in accordance with other applicable provisions of this subpart. However, the holding agency shall first be notified of the inability of the disposal agency to dispose of the property for use as a public airport and shall be allowed 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

(g) The Administrator of the Federal Aviation Administration has the sole responsibility for enforcing compliance with the terms and conditions of disposal, and for the reformation, correction, or amendment of any disposal instrument and the granting of releases and for taking any necessary action for recapturing such property in accordance with the provisions of the Act of October 1, 1949, 63 Stat. 700, and section 1402(c) of the Federal Aviation Act of 1958, 72 Stat. 807 (50 U.S.C. App. 1622a-1622e).

(h) In the event title to any such property is revested in the United States by reason of noncompliance with the terms and conditions of disposal, or other cause, the Administrator of the Federal Aviation Administration shall have accountability for the property and shall report the property to GSA as excess property in accordance with the provisions of §101-47.202.

(i) Section 23 of the Airport and Airway Development Act of 1970 (Airport Act of 1970) is not applicable to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 which is continued in effect by the Act. Only property which the holding agency determines cannot be reported excess to GSA for disposition under the Act, but which, nevertheless, may be made available for use by a State or local public body for public airport purposes without being inconsistent with the Federal program of the holding agency, may be conveyed under section 23 of the Airport Act of 1970. In the latter instance,

section 23 may be used for the transfer of nonexcess land for airport development purposes providing that such real property does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 46305, Sept. 15, 1977; 48 FR 1301, Jan. 12, 1983; 60 FR 35707, July 11, 1995]

§ 101-47.308-3 Property for use as historic monuments.

(a) Under section 203(k)(3) of the act, the disposal agency may, in its discretion, convey, without monetary consideration, to any State, political subdivision, instrumentalities thereof, or municipality, surplus real and related personal property for use as a historic monument for the benefit of the public provided the Secretary of the Interior has determined that the property is suitable and desirable for such use. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments. In addition, the disposal agency may authorize the use of property conveyed under subsection 203(k)(3) of the act or the Surplus Property Act of 1944, as amended, for revenue-producing activities if the Secretary of the Interior:

(1) Determines that such activities, as described in the applicant's proposed program of utilization, are compatible with the use of the property for historic monument purposes;

(2) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(3) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. The plan shall not be approved unless it provides that all incomes in excess of costs of repair, rehabilitation, restoration, maintenance and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities shall be used by the grantee,

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lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(4) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

(b) The disposal agency shall notify State and areawide clearinghouses and eligible public agencies, in accordance with the provisions of §101-47.303-2, that property which may be disposed of for use as a historic monument has been determined to be surplus. A copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules shall be transmitted with the copy of each such notice when it is sent to the proper regional office of the Bureau of Outdoor Recreation as provided in §101-47.303-2(d).

(c) Upon request, the disposal agency shall furnish eligible public agencies with an application form to acquire real property for permanent use as a historic monument and advise the potential applicant that it should consult with the appropriate Bureau of Outdoor Recreation Regional Office early in the process of developing the application.

(d) Eligible public agencies shall submit the original and two copies of the completed application to acquire real property for use as a historic monument in accordance with the provisions of §101-47.303-2 to the appropriate Bureau of Outdoor Recreation Regional Office which will forward one copy of the application to the appropriate regional office of the disposal agency. After consultation with the National Park Service, the Bureau of Outdoor Recreation shall promptly submit to the disposal agency the determination required of the Secretary of the Interior under section 203(k)(3) of the act for disposal of the property for a historic monument and compatible revenue-producing activities or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of the determination, the disposal agency may with the approval of the head of the disposal agency or his designee convey to an eligible public agency property determined by the Secretary of the Interior

to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of section 203(k)(3) of the Act.

(f) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(k)(4) of the act. Any such action shall be subject to the disapproval of the head of the disposal agency.

(g) The Department of the Interior shall notify the appropriate GSA regional Real Property Division, Public Buildings Service, immediately by letter when title to such historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has revested, GSA will assume custody and accountability of the property. However, the grantee shall be required to provide protection and maintenance of the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in §101-47.4913.

[40 FR 22257, May 22, 1975, as amended at 49 FR 44472, Nov. 7, 1984]

§ 101-47.308-4 Property for educational and public health purposes.

(a) The head of the disposal agency or his designee is authorized, at his discretion:

(1) To assign to the Secretary of the Department of Education (ED) for disposal under section 203(k)(1) of the Act such surplus real property, including

buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for school, classroom, or other educational use, or

(2) To assign to the Secretary of Health and Human Services (HHS) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use in the protection of public health, including research.

(b) With respect to real property and related personal property which may be made available for assignment to ED or HHS for disposal under section 203(k)(1) of the Act for educational or public health purposes, the disposal agency shall notify eligible public agencies, in accordance with the provisions of § 101-47.303-2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for an educational or public health use, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with ED or HHS, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from ED or HHS. The requirement for educational or public health use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (i) of this section, of a recommendation for assignment of Federal surplus real property received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in paragraph (j) of this section.

(c) With respect to surplus real property and related personal property which may be made available for assignment to either Secretary for disposal under section 203(k)(1) of the Act for educational or public health purposes to nonprofit institutions which have been held exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), ED or HHS may notify eligi-

ble nonprofit institutions, in accordance with the provisions of § 101-47.303-2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit institutions shall state that any requirement for educational or public health use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for educational or public health use of the property by an eligible nonprofit institution will be contingent upon the disposal agency's approval, under paragraph (i) of this section, of an assignment recommendation received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in (j) below.

(d) ED and HHS shall notify the disposal agency within 20-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever ED or HHS has notified the disposal agency within the said 20-calendar day period of a potential educational or public health requirement for the property, ED or HHS shall submit to the disposal agency within 25-calendar days after the expiration of the 20-calendar day period, a recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(e) Whenever an eligible public agency has submitted a plan of use for property for an educational or public health requirement, in accordance with the provisions of § 101-47.303-2, the disposal agency shall transmit two copies of the plan to the regional office of ED or HHS as appropriate. ED or HHS shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, or shall inform

the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS as appropriate.

(f) Any assignment recommendation submitted to the disposal agency by ED or HHS shall set forth complete information concerning the educational or public health use, including: (1) Identification of the property, (2) the name of the applicant and the size and nature of its program, (3) the specific use planned, (4) the intended public benefit allowance, (5) the estimate of the value upon which such proposed allowance is based, and, (6) if the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor. ED or HHS shall furnish to the holding agency a copy of the recommendation, unless the holding agency is also the disposal agency.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating thereto.

(h) In the absence of an assignment recommendation from ED or HHS submitted pursuant to § 101-47.308-4 (d) or (e), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it shall assign the property by letter or other document to the Secretary of ED or HHS as appropriate. If the recommendation is disapproved, the disposal agency shall likewise notify the appropriate Department. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, ED or HHS shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(1) (A) or (B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed

Transfer, ED or HHS may proceed with the transfer.

(k) ED or HHS shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. ED or HHS shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(1) (A) or (B) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(l) ED or HHS, as appropriate, has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by ED or HHS of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or conditions of sale or other cause, ED or HHS shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from ED or HHS that such property has been repossessed or title has reverted, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the

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Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101-47.4913.

[49 FR 3465, Jan. 27, 1984]

§ 101-47.308-5 [Reserved]

§ 101-47.308-6 Property for providing self-help housing or housing assistance.

(a) Property for self-help housing or housing assistance, as defined in section 203(k)(6)(C) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C.), is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of self-help housing, under terms that require that:

(1) Any individual or family receiving housing or housing assistance constructed, rehabilitated, or refurbished through use of the property shall contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(2) Dwellings constructed, rehabilitated, or refurbished through use of the property shall be quality dwellings that comply with local building and safety codes and standards and shall be available at prices below prevailing market prices.

NOTE TO PARAGRAPH (a): This program is separate from the program under Title V of the Stewart B. McKinney Act of 1987, which is covered in 41 CFR subpart 101-47.9 (Use of Federal Real Property To Assist the Homeless).

(b) The head of the disposal agency, or his/her designee, is authorized, at his/her discretion to assign to the Secretary of the Department of Housing and Urban Development (HUD) for disposal under section 203(k)(6) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for providing self-help housing or housing assistance for low-income individuals or families.

(c) With respect to real property and related personal property which may be made available for assignment to HUD for disposal under section 203(k)(6) of the Act for self-help housing or housing assistance purposes, the

disposal agency shall notify eligible public agencies, in accordance with the provisions of § 101-47.303-2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for self-help housing or housing assistance use involved in the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from HUD. The requirement for self-help housing or housing assistance use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (j) of this section and a recommendation for assignment of Federal surplus real property received from HUD. Any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in paragraph (k) of this section.

(d) With respect to surplus real property and related personal property which may be made available for assignment to HUD for disposal under section 203(k)(6) of the Act for self-help housing or housing assistance purposes to nonprofit organizations that exist for the primary purpose of providing housing or housing assistance for low-income individuals or families, HUD may notify such eligible nonprofit organizations, in accordance with the provisions of § 101-47.303-2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit organizations shall state that any requirement for housing or housing assistance use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for self-help housing or housing assistance use of the property by an eligible nonprofit organization will be contingent upon the disposal agency's approval, under paragraph (j) of this section, of an assignment recommendation received from

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HUD, and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in paragraph (k) of this section.

(e) HUD shall notify the disposal agency within 30-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever HUD has notified the disposal agency within the 30-calendar day period of a potential self-help housing or housing assistance requirement for the property, HUD shall submit to the disposal agency within 25-calendar days after the expiration of the 30-calendar day period, a recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(f) Whenever an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement, in accordance with the provisions of §101-47.303-2, the disposal agency shall transmit two copies of the plan to the regional office of HUD. HUD shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to HUD.

(g) Any assignment recommendation submitted to the disposal agency by HUD shall set forth complete information concerning the self-help housing or housing assistance use, including:

- (1) Identification of the property;
- (2) Name of the applicant and the size and nature of its program;
- (3) Specific use planned;
- (4) Intended public benefit allowance;
- (5) Estimate of the value upon which such proposed allowance is based; and
- (6) If the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor.

NOTE TO PARAGRAPH (g): HUD shall furnish to the holding agency a copy of the rec-

ommendation, unless the holding agency is also the disposal agency.

(h) Holding agencies shall cooperate to the fullest extent possible with representatives of HUD in their inspection of such property and in furnishing information relating thereto.

(i) In the absence of an assignment recommendation from HUD submitted pursuant to §101-47.308-6(e) or (f), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal actions.

(j) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it shall assign the property by letter or other document to the Secretary of HUD. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary of HUD. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(k) Subsequent to the receipt of the disposal agency's letter of assignment, HUD shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(6)(B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, HUD may proceed with the transfer.

(l) HUD shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. HUD shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(6) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(m) HUD has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of

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any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. HUD maintains the same responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by HUD of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(n) If any property previously conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary (HUD or the Secretary of Agriculture (USDA)) and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(o) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD (or USDA) that such property has been repossessed or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a min-

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imum, conform to the standards prescribed in §101-47.4913.

[64 FR 5617, Feb. 4, 1999]

§ 101-47.308-7 Property for use as public park or recreation areas.

(a) The head of the disposal agency or his designee is authorized, in his discretion, to assign to the Secretary of the Interior for disposal under section 203(k)(2) of the Act for public park or recreation purposes, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use as a public park or recreation area for disposal by the Secretary to a State, political subdivision, instrumentalities thereof, or municipality.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of §101-47.303-2, that property which may be disposed of for use as a public park or recreation area has been determined to be surplus. There shall be transmitted with the copy of each such notice, when sent to the proper field office of the Bureau of Outdoor Recreation, a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) An application form to acquire property for permanent use as a public park or recreation area and instructions for the preparation of the application shall be furnished by the Department of the Interior upon request.

(d) The Department of the Interior shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property under section 203(k)(2) of the Act.

(e) Holding agencies shall cooperate to the fullest extent possible with representatives of the Department of the Interior in their inspection of such property and in furnishing information relating thereto.

(f) The Department of the Interior shall advise the disposal agency and request assignment of the property for disposition under section 203(k)(2) of

the Act, as amended, within 25 calendar days after the expiration of the 20-calendar-day period specified in paragraph (d) of this section.

(g) Any recommendation submitted by the Department of the Interior pursuant to paragraph (f) of this section shall set forth complete information concerning the plans for use of the property as a public park or recreation area, including (1) identification of the property, (2) the name of the applicant, (3) the specific use planned, and (4) the intended public benefit allowance. A copy of the application together with any other pertinent documentation shall be submitted with the recommendation.

(h) In the absence of a notice under paragraph (d) of this section or a request under paragraph (f) of this section, the disposal agency shall proceed with the appropriate disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from the Department of the Interior, it shall assign the property by letter or other document to the Secretary of the Interior. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, the Secretary of the Interior shall furnish to the disposal agency a Notice of Proposed Transfer, in accordance with section 203(k)(2)(A) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, the Secretary may proceed with the transfer.

(k) The disposal agency may, where appropriate, make the assignment subject to the Department of the Interior requiring the applicant to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security of the remaining property or otherwise.

(l) In the absence of the notice of disapproval by the disposal agency upon expiration of the 30-day period, or upon

earlier advice from the disposal agency of no objection to the proposed transfer, the Department of the Interior may place the applicant in possession of the property as soon as practicable in order to minimize the Government's expense of protection and maintenance of the property. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the applicant shall assume responsibility for care and handling and all risks of loss or damage to the property, and shall have all obligations and liabilities of ownership.

(m) The Department of the Interior shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice.

(n) The deed of conveyance of any surplus real property transferred under the provision of section 202(k)(2) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Secretary of the Interior to be necessary to safeguard the interest of the United States.

(o) The Department of the Interior shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 203(k)(2) of the Act and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

(p) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of transfer; the reformation, correction, or amendment of any transfer instrument; the granting of releases; and any

necessary actions for recapturing such property in accordance with the provisions of section 202(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by the Secretary of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(q) The Department of the Interior shall notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has revested, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in §101-47.4913.

[36 FR 9776, May 28, 1971, as amended at 49 FR 3467, Jan. 27, 1984]

§ 101-47.308-8 Property for displaced persons.

(a) Pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the disposal agency is authorized to transfer surplus real property to a State agency, as hereinafter provided, for the purpose of providing replacement housing under title II of this Act for persons who are to be displaced by Federal or federally assisted projects.

(b) Upon receipt of the notice of surplus determination (§101-47.204-1(a)),

any Federal agency having a requirement for such property for housing for displaced persons may solicit applications from eligible State agencies.

(c) Federal agencies shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible State agency in acquiring the property under section 218.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(e) The interested Federal agency shall advise the disposal agency and request transfer of the property to the selected State agency under section 218 within 25 calendar days after the expiration of the 20-calendar-day period specified in §101-47.308-8(c).

(f) Any request submitted by a Federal agency pursuant to §101-47.308-8(e) shall be in the form of a letter addressed to the appropriate GSA regional office and shall set forth the following information:

(1) Identification of the property by name, location, and control number;

(2) A request that the property be transferred to a specific State agency including the name and address and a copy of the State agency's application or proposal;

(3) A certification by the appropriate Federal agency official that the property is required for housing for displaced persons pursuant to section 218, that all other options authorized under title II of the Act have been explored and replacement housing cannot be found or made available through those channels, and that the Federal or federally assisted project cannot be accomplished unless the property is made available for replacement housing;

(4) Any special terms and conditions that the Federal agency desires to include in conveyance instruments to insure that the property is used for the intended purpose;

(5) Identification by name and proposed location of the Federal or federally assisted project which is creating the requirement;

(6) Purpose of the project;

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(7) Citation of enabling legislation or authorization for the project when appropriate;

(8) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Act; and

(9) Arrangements that have been made to construct replacement housing on the surplus property and to insure that displaced persons will be provided housing in the development.

(g) In the absence of a notice under § 101-47.308-8(c) or a request under § 101-47.308-8(e), the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it shall transfer the property to the designated State agency on such terms and conditions as will protect the interest of the United States, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency shall be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value, in which event the disposal may be made at such other value as is approved by the disposal agency.

(i) The State agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as costs of surveys, fencing, or security of the remaining property.

(j) The disposal agency, if it approves the request, shall transfer the property to the designated State agency. If the request is disapproved, the disposal agency shall notify the Federal agency requesting the transfer. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval, and the Federal agency requesting the transfer a copy of the transfer when appropriate.

[36 FR 11439, June 12, 1971]

§ 101-47.308-9 Property for correctional facility, law enforcement, or emergency management response purposes.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for:

(1) Correctional facility purposes, provided the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(2) Law enforcement purposes, provided the Attorney General has determined that the property is required for such purposes; and

(3) Emergency management response purposes, including fire and rescue services, provided the Director of the Federal Emergency Management Agency has determined that the property is required for such purposes.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and the Federal Emergency Management Agency (FEMA) of the availability of surplus properties. Included in the notification to OJP and FEMA will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility, law enforcement, or emergency management response purposes, OJP or FEMA shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility, law enforcement, or emergency management response use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP or

FEMA, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP or FEMA. OJP defines the term "law enforcement" to mean "any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training." The requirement for correctional facility, law enforcement, or emergency management response use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination:

(1) By DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders, or for law enforcement use; or

(2) By FEMA that identifies surplus property required for emergency management response use.

(d) OJP or FEMA shall notify the disposal agency within 30-calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP or FEMA has notified the disposal agency within the said 30-calendar day period of a potential correctional facility, law enforcement, or emergency management response requirement for the property, OJP or FEMA shall submit to the disposal agency within 25-calendar days after the expiration of the 30-calendar day period, a determination indicating a correctional facility requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, a law enforcement requirement, or an emergency management response requirement, or shall inform the disposal agency, within the 25-calendar day period, that the property will not be required for correctional facility, law enforcement, or an emergency management response use.

(e) Any determination submitted to the disposal agency by DOJ or FEMA shall set forth complete information concerning the correctional facility,

law enforcement, or emergency management response use, including:

(1) Identification of the property;

(2) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(3) A copy of the approved application which defines the proposed plan of use; and

(4) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ or FEMA, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ or FEMA submitted pursuant to §101-47.308-9(d), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal actions. The disposal agency shall notify OJP or FEMA 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and shall furnish to OJP or FEMA a copy of the conveyance documents.

(h) The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator of General Services to be

necessary to safeguard the interest of the United States.

(i) The Administrator of General Services has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(p)(3) of the Act.

(j) The OJP or FEMA will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of non-compliance with the terms of the conveyance documents or other cause, OJP or FEMA shall, at or prior to such repossession, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from OJP or FEMA that such property has been repossessed and/or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101-47.4913.

[52 FR 9832, Mar. 27, 1987, as amended at 64 FR 5618, Feb. 4, 1999]

§ 101-47.308-10 Property for port facility use.

(a) Under section 203(q)(1) of the Act, in his/her discretion, the Administrator, the Secretary of the Department of Defense (DOD) in the case of property located at a military installation closed or realigned pursuant to a base closure law, or the designee of either of them, may, as the disposal agency, assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary con-

sideration, to any State, or to those governmental bodies named therein, or to any political subdivision, municipality, or instrumentality thereof, such surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, as is recommended by DOT as being needed for the development or operation of a port facility.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of § 101-47.303-2, that property which may be disposed of for use in the development or operation of a port facility has been determined to be surplus. A copy of such notice shall be transmitted to DOT accompanied by a copy of the holding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

(c) The notice to eligible public agencies shall state:

(1) That any planning for the development or operation of a port facility, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with DOT;

(2) That any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for instructions concerning submission of an application; and

(3) That the requirement for use of the property in the development or operation of a port facility will be contingent upon approval by the disposal agency, under paragraph (i) of this section, of a recommendation from DOT for assignment of the property to DOT and that any subsequent conveyance shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in paragraph (j) of this subsection.

(d) DOT shall notify the disposal agency within 20 calendar-days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever the disposal agency, has been so notified of a potential port facility requirement for the property,

DOT shall submit to the disposal agency, within 25 calendar-days after the expiration of the 20-calendar-day notification period, either a recommendation for assignment of the property or a statement that a recommendation will not be submitted.

(e) Whenever an eligible public agency has submitted a plan of use for property for a port facility requirement, in accordance with the provisions of § 101-47.303-2, the disposal agency shall transmit two copies of the plan to DOT. DOT shall either submit to the disposal agency, within 25 calendar-days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 25-calendar-day period, that a recommendation will not be made for assignment of the property to DOT.

(f) Any assignment recommendation submitted to the disposal agency by DOT shall be accompanied by a copy of the explanatory statement required under section 203(q)(3)(C) of the Act and shall set forth complete information concerning the contemplated port facility use, including:

- (1) An identification of the property;
- (2) An identification of the applicant;
- (3) A copy of the approved application, which defines the proposed plan of use of the property;
- (4) A statement that DOT's determination that the property is located in an area of serious economic disruption was made in consultation with the Secretary of Labor; and
- (5) A statement that DOT's approval of the economic development plan associated with the plan of use of the property was made in consultation with the Secretary of Commerce.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of DOT and the Secretary of Commerce in their inspection of such property, and of the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating thereto.

(h) In the absence of an assignment recommendation from DOT submitted pursuant to paragraph (d) or (e) of this section, and received within the 25-calendar-day time limit specified therein,

the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, it shall assign the property by letter or other document to DOT. If the recommendation is disapproved, the disposal agency shall likewise notify DOT. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the letter of assignment from the disposal agency, DOT shall furnish to the disposal agency, a Notice of Proposed Conveyance in accordance with section 203(q)(2) of the Act. If the disposal agency has not disapproved the proposed transfer within 35 calendar-days of the receipt of the Notice of Proposed Conveyance, DOT may proceed with the conveyance.

(k) DOT shall furnish the Notice of Proposed Conveyance within 35 calendar-days after the date of the letter of assignment from the disposal agency, prepare the conveyance documents, and take all necessary actions to accomplish the conveyance within 15 calendar-days after the expiration of the 30-calendar-day period provided for the disposal agency to consider the notice. DOT shall furnish the disposal agency two conformed copies of the instruments conveying property under subsection 203(q) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

(l) DOT has the responsibility for enforcing compliance with the terms and conditions of conveyance; for reformation, correction, or amendment of any instrument of conveyance; for the granting of release; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of subsection 203(q)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency, by DOT, of any action proposed to be

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taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a reversion of title by reason of noncompliance with the terms or conditions of conveyance or other cause, DOT shall, at or prior to such reversion of title, provide the appropriate GSA regional office, with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and appropriate accompanying schedules shall be used for this purpose. Upon receipt of advice from DOT that such property has been repossessed, GSA will review and act upon the Standard Form 118. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in §101-47.4913.

[60 FR 35707, July 11, 1995]

§101-47.309 Disposal of leases, permits, licenses, and similar instruments.

The disposal agency may, subject to such reservations, restrictions, and conditions, if any, as the disposal agency deems necessary properly to protect the interests of the United States against liability under a lease, permit, license, or similar instrument:

(a) Dispose of the lease or other instrument subject to assumption by the transferee of the obligations in the lease or other instrument unless a transfer is prohibited by the terms of the lease or other instrument; or

(b) Terminate the lease or other instrument by notice or negotiated agreement; and

(c) Dispose of any surplus Government-owned improvements located on the premises in the following order by any one or more of the following methods:

(1) By disposition of all or a portion thereof to the transferee of the lease or other instrument (not applicable when the lease or other instrument is terminated);

(2) By disposition to the owner of the premises or grantor of a sublease, as the case may be, (i) in full satisfaction of a contractual obligation of the Government to restore the premises, or (ii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment of a money consideration to the Government by the owner or grantor, as the case may be, that is fair and reasonable under the circumstances, or (iii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment by the Government to the owner or grantor, as the case may be, of a money consideration that is fair and reasonable under the circumstances; or

(3) By disposition for removal from the premises.

Provided, That any negotiated disposals shall be subject to the applicable provisions of §§101-47.304-9 and 101-47.30-12. The cancellation of the Government's restoration obligations in return for the conveyance of the Government-owned improvements to the lessor is considered a settlement of a contractual obligation rather than a disposal of surplus real property and, therefore, is not subject to the provisions of §§101-47.304-9 and 101-47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966]

§101-47.310 Disposal of structures and improvements on Government-owned land.

In the case of Government-owned land, the disposal agency may dispose of structures and improvements with the land or separately from the land: *Provided*, That prefabricated movable structures such as Butler-type storage warehouses, and quonset huts, and housetrailers (with or without undercarriages) reported to GSA with the land on which they are located, may, in the discretion of GSA, be designated for disposal as personal property for off-site use.

§101-47.311 Disposal of residual personal property.

(a) Any related personal property reported to GSA on Standard Form 118

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which is not disposed of by GSA as related to the real property, shall be designated by GSA for disposal as personal property.

(b) Any related personal property which is not disposed of by the holding agency, pursuant to the authority contained in §101-47.302, or authority otherwise delegated by the Administrator of General Services as related to the real property, shall be disposed of under the applicable provisions of part 101-45.

§ 101-47.312 Non-Federal interim use of property.

(a) A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property; *Provided*, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not to exceed 30 days' notice by the disposal agency: And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States. Any negotiated lease or permit under this section shall be subject to the applicable provisions of §§101-47.304-9 and 101-47.304-12, except that no explanatory statement to the appropriate committees of the Congress need to be prepared with respect to a negotiated lease or permit providing for an annual net rental of \$100,000 or less, and termination by either part on 30 days' notice.

(b) [Reserved]

[54 FR 41245, Oct. 6, 1989]

§ 101-47.313 Easements.

§ 101-47.313-1 Disposal of easements to owner of servient estate.

The disposal agency may dispose of an easement to the owner of the land which is subject to the easement when the continued use, occupancy, or control of the easement is not needed for

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the operation, production, use, or maintenance of property owned or controlled by the Government. A determination shall be made by the disposal agency as to whether the disposal shall be with or without consideration to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost of the easement to the Government. The extent of such consideration shall be regarded as the appraised fair market value of the easement. The disposal agency shall document the circumstances and factors leading to such determination and retain such documentation in its files.

§ 101-47.313-2 Grants of easements in or over Government property.

The disposal agency may grant easements in or over real property on appropriate terms and conditions: *Provided*, That where the disposal agency determines that the granting of such easement decreases the value of the property, the granting of the easement shall be for a consideration not less than the amount by which the fair market value of the property is decreased.

§ 101-47.314 Compliance.

§ 101-47.314-1 General.

Subject to the provisions of §101-47.314-2(a), requiring referral of criminal matters to the Department of Justice, each disposal agency shall perform such investigatory functions as are necessary to insure compliance with the provisions of the Act and with the regulations, orders, directives, and policy statements of the Administrator of General Services.

§ 101-47.314-2 Extent of investigations.

(a) *Referral to other Government agencies.* All information indicating violations by any person of Federal criminal statutes, or violations of section 209 of the Act, including but not limited to fraud against the Government, mail fraud, bribery, attempted bribery, or criminal collusion, shall be referred immediately to the Department of Justice for further investigation and disposition. Each disposal agency shall make available to the Department of

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Justice, or to such other governmental investigating agency to which the matter may be referred by the Department of Justice, all pertinent information and evidence concerning the indicated violations; shall desist from further investigation of the criminal aspects of such matters except upon the request of the Department of Justice; and shall cooperate fully with the agency assuming final jurisdiction in establishing proof of criminal violations. After making the necessary referral to the Department of Justice, inquiries conducted by disposal agency compliance organizations shall be limited to obtaining information for administrative purposes. Where irregularities reported or discovered involve wrongdoing on the part of individuals holding positions in Government agencies other than the agency initiating the investigation, the case shall be reported immediately to the Administrator of General Services for an examination in the premises.

(b) *Compliance reports.* A written report shall be made of all compliance investigations conducted by each agency compliance organization. Each disposal agency shall maintain centralized files of all such reports at its respective departmental offices. Until otherwise directed by the Administrator of General Services, there shall be transmitted promptly to the Administrator of General Services one copy of any such report which contains information indicating criminality on the part of any person or indicating noncompliance with the Act or with the regulations, orders, directives and policy statements of the Administrator of General Services. In transmitting such reports to the Administrator of General Services, the agency shall set forth the action taken or contemplated by the agency to correct the improper conditions established by the investigation. Where any matter is referred to the Department of Justice, a copy of the letter of referral shall be transmitted to the Administrator of General Services.

Subpart 101-47.4—Management of Excess and Surplus Real Property

§ 101-47.400 Scope of subpart.

This subpart prescribes the policies and methods governing the physical care, handling, protection, and maintenance of excess real property and surplus real property, including related personal property, within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

[47 FR 4522, Feb. 1, 1982]

§ 101-47.401 General provisions of subpart.

§ 101-47.401-1 Policy.

It is the policy of the Administrator of General Services:

(a) That the management of excess real property and surplus real property, including related personal property, shall provide only those minimum services necessary to preserve the Government's interest therein, realizable value of the property considered.

(b) To place excess real property and surplus real property in productive use through interim utilization: *Provided*, That such temporary use and occupancy will not interfere with, delay, or retard its transfer to a Federal agency or disposal.

(c) That excess and surplus real property which is dangerous to the public health or safety shall be destroyed or rendered innocuous.

§ 101-47.401-2 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

(a) *Maintenance.* The upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating,

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plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment.

(b) *Repairs.* Those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

§ 101-47.401-3 Taxes and other obligations.

Payments of taxes or payments in lieu of taxes (in the event of the enactment hereafter of legislation by Congress authorizing such payments upon Government-owned property which is not legally assessable), rents, and insurance premiums and other obligations pending transfer or disposal shall be the responsibility of the holding agency.

§ 101-47.401-4 Decontamination.

The holding agency shall be responsible for all expense to the Government and for the supervision of decontamination of excess and surplus real property that has been subjected to contamination with hazardous materials of any sort. Extreme care must be exercised in the decontamination, and in the management and disposal of contaminated property in order to prevent such properties becoming a hazard to the general public. The disposal agency shall be made cognizant of any and all inherent hazards involved relative to such property in order to protect the general public from hazards and to preclude the Government from any and all liability resulting from indiscriminate disposal or mishandling of contaminated property.

§ 101-47.401-5 Improvements or alterations.

Improvements or alterations which involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in structures, utilities, installations, and land betterments, may be considered in those cases where disposal cannot otherwise be made, but no commitment therefor shall be en-

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tered into without prior approval of GSA.

§ 101-47.401-6 Interim use and occupancy.

When a revocable agreement to place excess real property or surplus real property in productive use has been made, the agency executing the agreement shall be responsible for the servicing thereof.

§ 101-47.402 Protection and maintenance.

§ 101-47.402-1 Responsibility.

The holding agency shall retain custody and accountability for excess and surplus real property including related personal property and shall perform the protection and maintenance of such property pending its transfer to another Federal agency or its disposal. Guidelines for protection and maintenance of excess and surplus real property are in § 101-47.4913. The holding agency shall be responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

[49 FR 1348, Jan. 11, 1984]

§ 101-47.402-2 Expense of protection and maintenance.

(a) The holding agency shall be responsible for the expense of protection and maintenance of such property pending transfer or disposal for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition. If the holding agency requests deferral of the disposal, continues to occupy the property beyond the excess date to the detriment of orderly disposal, or otherwise takes actions which result in a delay in the disposition, the period for which that agency is responsible for such expenses shall be extended by the period of delay. (See § 101-47.202-9.)

(b) In the event the property is not transferred to a Federal agency or disposed of during the period mentioned

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in paragraph (a) of this section, the expense of protection and maintenance of such property from and after the expiration date of said period shall be either paid or reimbursed to the holding agency, subject to the limitations herein, which payment or reimbursement shall be in the discretion of the disposal agency. The maximum amount of protection and maintenance to be paid or reimbursed by the disposal agency will be specified in a written agreement between the holding agency and the disposal agency, but such payment or reimbursement is subject to the appropriations by Congress to the disposal agency of funds sufficient to make such payment or reimbursement. In accordance with the written agreement, the disposal agency and the holding agency will sign an obligational document only if and when Congress actually appropriates to the disposal agency, pursuant to its request, funds sufficient to pay or reimburse the holding agency for protection and maintenance expenses, as agreed. In the absence of a written agreement, the holding agency shall be responsible for all expenses of protection and maintenance, without any right of contribution or reimbursement from the disposal agency.

[49 FR 1348, Jan. 11, 1984]

§ 101-47.403 Assistance in disposition.

The holding agency is expected to cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the holding agency shall absorb the entire cost of such actions. (See § 101-47.304-5.)

[36 FR 3894, Mar. 2, 1971]

Subpart 101-47.5—Abandonment, Destruction, or Donation to Public Bodies

§ 101-47.500 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the abandonment, destruction, or donation to the public bodies by Federal agencies of real property located within the States of the Union, the District of Columbia, the Commonwealth of Puerto

Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) The subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to section 203(k) of the Act.

[29 FR 16126, Dec. 3, 1964, as amended at 47 FR 4522, Feb. 1, 1982]

§ 101-47.501 General provisions of subpart.

§ 101-47.501-1 Definitions.

(a) *No commercial value* means real property, including related personal property, which has no reasonable prospect of being disposed of at a consideration.

(b) *Public body* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

§ 101-47.501-2 Authority for disposal.

Subject to the restrictions in § 101-47.502 and § 101-47.503, any Federal agency having control of real 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, is authorized:

(a) To abandon or destroy Government-owned improvements and related personal property located on privately owned land.

(b) To destroy Government-owned improvements and related personal property located on Government-owned land. Abandonment of such property is not authorized.

(c) To donate to public bodies any real property (land and/or improvements and related personal property), or interests therein, owned by the Government.

§ 101-47.501-3 Dangerous property.

No property which is dangerous to public health or safety shall be abandoned, destroyed, or donated to public bodies pursuant to this subpart without first rendering such property innocuous or providing adequate safeguards therefor.

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§ 101-47.501-4 Findings.

(a) No property shall be abandoned, destroyed, or donated by a Federal agency under §101-47.501-2, unless a duly authorized official of that agency finds, in writing, either that (1) such property has no commercial value, or (2) the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. Such finding shall not be made by any official directly accountable for the property covered thereby.

(b) Whenever all the property proposed to be disposed of hereunder by a Federal 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 §101-47.501-4(a), shall be approved by a reviewing authority before any such disposal.

§ 101-47.502 Donations to public bodies.

§ 101-47.502-1 Cost limitations.

No improvements on land or related personal property having an original cost (estimated if not known) in excess of \$250,000 and no land, regardless of cost, shall be donated to public bodies without the prior concurrence of GSA. The request for such concurrence shall be made to the regional office of GSA for the region in which the property is located.

§ 101-47.502-2 Disposal costs.

Any public body receiving improvements on land or related personal property pursuant to this subpart shall pay the disposal costs incident to the donation, such as dismantling, removal, and the cleaning up of the premises.

§ 101-47.503 Abandonment and destruction.

§ 101-47.503-1 General.

(a) No improvements on land or related personal property shall be abandoned or destroyed by a Federal agency unless a duly authorized official of that agency finds, in writing, that donation of such property in accordance with the provisions of this subpart is not feasible. This finding shall be in addition to the finding prescribed in §101-47.501-4. If at any time prior to actual

abandonment or destruction the donation of the property pursuant to this subpart becomes feasible, such donation will be accomplished.

(b) No abandonment or destruction shall be made in a manner which is detrimental or dangerous to public health or safety or which will cause infringement of the rights of other persons.

(c) The concurrence of GSA shall be obtained prior to the abandonment or destruction of improvements on land or related personal property (1) which had an original cost (estimated if not known) of more than \$50,000, or (2) which are of permanent type construction, or (3) where their retention would enhance the value of the underlying land, if it were to be made available for sale or lease.

§ 101-47.503-2 Notice of proposed abandonment or destruction.

Except as provided in §101-47.503-3, improvements on land or related personal property shall not be abandoned or destroyed by a Federal agency until after public notice of such proposed abandonment or destruction. Such notice shall be given in the area in which the property is located, shall contain a general description of the property to be abandoned or destroyed, and shall include an offering of the property for sale. A copy of such notice shall be given to the regional office of GSA for the region in which the property is located.

§ 101-47.503-3 Abandonment or destruction without notice.

If (a) the property had an original cost (estimated if not known) of not more than \$1,000; or (b) its value is so low or the cost of its care and handling so great that its retention in order to post public notice is clearly not economical; or (c) immediate abandonment or destruction is required by considerations of health, safety, or security; or (d) the assigned mission of the agency might be jeopardized by the delay, and a finding with respect to paragraph (a), (b), (c), or (d) of this section, is made in writing by a duly authorized official of the Federal agency and approved by a reviewing authority, abandonment or destruction may be made without public notice. Such a

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finding shall be in addition to the findings prescribed in §§101-47.501-4 and 101-47.503-1(a).

Subpart 101-47.6—Delegations

§ 101-47.600 Scope of subpart.

This subpart sets forth the special delegations of authority granted by the Administrator of General Services to other agencies for the utilization and disposal of certain real property pursuant to the Act.

§ 101-47.601 Delegation to Department of Defense.

(a) Authority is delegated to the Secretary of Defense to determine that excess real property and related personal property under the control of the Department of Defense having a total estimated fair market value, including all the component units of the property, of less than \$15,000 as determined by the Department of Defense, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Defense shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this §101-47.601 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under subpart 101-47.2 shall not be required.

(d) The authority delegated in this §101-47.601 may be redelegated to any officer or employee of the Department of Defense.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56935, Nov. 7, 1991]

§ 101-47.602 Delegation to the Department of Agriculture.

(a) Authority is delegated to the Secretary of Agriculture to determine that excess real property and related personal property under the control of the Department of Agriculture having a total estimated fair market value, in-

cluding all the component units of the property, of less than \$15,000 as determined by the Department of Agriculture, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Agriculture shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this §101-47.602 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under subpart 101-47.2 shall not be required.

(d) The authority delegated in this §101-47.602 may be redelegated to any officer or employee of the Department of Agriculture.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56936, Nov. 7, 1991]

§ 101-47.603 Delegations to the Secretary of the Interior.

(a) Authority is delegated to the Secretary of the Interior to maintain custody and control of an accountability for those mineral resources which may be designated from time to time by the Administrator or his designee and which underlie Federal property currently utilized or excess or surplus to the Government's needs. Authority is also delegated to the Secretary to dispose of such mineral resources by lease and to administer any leases which are made.

(1) The Secretary may redelegate this authority to any officer, official, or employee of the Department of the Interior.

(2) Under this authority, the Secretary of the Interior, as head of the holding agency is responsible for the following: (i) Maintaining proper inventory records, and (ii) monitoring the minerals as necessary to ensure that no unauthorized mining or removal of the minerals occurs.

(3) Under this authority, the Secretary of the Interior, as head of the disposal agency, is responsible for the

following: (i) Securing, in accordance with §101-47.303-4, any appraisals deemed necessary by the Secretary; (ii) coordinating with all surface landowners, Federal or otherwise, so as not to unduly interfere with the surface use; (iii) ensuring that the lands which may be disturbed or damaged are restored after removal of the mineral deposits is completed; and (iv) notifying the Administrator when the disposal of all marketable mineral deposits has been completed.

(4) The Secretary of the Interior, as head of the disposal agency, is responsible for complying with the applicable environmental laws and regulations, including (i) the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*) and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); (ii) section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); and (iii) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930).

(5) The Secretary of the Interior will forward promptly to the Administrator copies of any agreements executed under this authority.

(6) The Secretary of the Interior will provide to the Administrator an annual accounting of the proceeds received from leases executed under this authority.

(b) Authority is delegated to the Secretary of the Interior to determine that excess real property and related personal property under his control having a total estimated fair market value, including all components of the property, of less than \$15,000 as determined by the Secretary, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of the property by means most advantageous to the United States.

[48 FR 50893, Nov. 4, 1983, as amended at 56 FR 56936, Nov. 7, 1991]

§ 101-47.604 Delegation to the Department of the Interior, the Department of Health and Human Services, and the Department of Education.

(a) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are delegated authority to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any functions relating to the Indians. The term *property*, as used in this §101-47.604, includes real property and such personal property as the Secretary making the transfer or retransfer determines to be related personal property.

(b) This authority shall be exercised only in connection with property which the Secretary transferring or retransferring such property determines:

(1) Comprises a functional unit;

(2) Is located within the United States; and

(3) Has an acquisition cost of \$100,000 or less: *Provided, however*, That the transfer or retransfer shall not include property situated in any area which is recognized as an urban area or place for the purpose of the most recent decennial census.

(c) No screening of the property as required by the regulations in this part 101-47 need be conducted, it having been determined that such screening among Federal agencies would accomplish no useful purpose since the property which is subject to transfer or retransfer hereunder will continue to be used in the administration of any functions relating to the Indians.

(d) Any such transfer or retransfer of a specific property shall be without reimbursement except:

(1) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(2) Whenever reimbursement at fair value is required by subpart 101-47.2.

(e) Where funds were not programed and appropriated for acquisition of the

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property, the Secretary requesting the transfer or retransfer shall so certify. Any determination necessary to carry out the authority contained in this §101-47.604 which otherwise would be required under this part to be made by GSA shall be made by the Secretary transferring or retransferring the property.

(f) The authority conferred in this §101-47.604 shall be exercised in accordance with such other provisions of the regulations of GSA issued pursuant to the Act as may be applicable.

(g) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are authorized to redelegate any of the authority contained in this §101-47.604 to any officers or employees of their respective departments.

[29 FR 16126, Dec. 3, 1964, as amended at 56 FR 56936, Nov. 7, 1991]

Subpart 101-47.7—Conditional Gifts of Real Property To Further the Defense Effort

§101-47.700 Scope of subpart.

This subpart provides for acceptance or rejection on behalf of the United States of any gift of real property offered on condition that it be used for a particular defense purpose and for subsequent disposition of such property (Act of July 27, 1954, (50 U.S.C. 1151-1156)).

[40 FR 12079, Mar. 17, 1975]

§101-47.701 Offers and acceptance of conditional gifts.

(a) Any agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of the Act of July 27, 1954, shall notify the appropriate regional office of GSA and shall submit a recommendation as to acceptance or rejection of the gift.

(b) Prior to such notification, the receiving agency shall acknowledge receipt of the offer and advise the donor of its referral to the GSA regional office, but should not indicate acceptance or rejection of the gift on behalf of the United States. A copy of the acknowledgment shall accompany the

notification and recommendation to the regional office.

(c) When the gift is determined to be acceptable and it can be accepted and used in the form in which offered, it will be transferred without reimbursement to an agency designated by GSA for use for the particular purpose for which it was donated.

(d) If the gift is one which GSA determines may and should be converted to money, the funds, after conversion, will be deposited with the Treasury Department for transfer to an appropriate account which will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

§101-47.702 Consultation with agencies.

Such conditional gifts of real property will be accepted or rejected on behalf of the United States or transferred to an agency by GSA, only after consultation with the interested agencies.

§101-47.703 Advice of disposition.

GSA will advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

§101-47.704 Acceptance of gifts under other laws.

Nothing in this subpart 101-47.7 shall be construed as applicable to the acceptance of gifts under the provisions of other laws.

Subpart 101-47.8—Identification of Unneeded Federal Real Property

§101-47.800 Scope of subpart.

This subpart is designed to implement, in part, section 2 of Executive Order 12512, which provides, in part, that the Administrator of General Services shall provide Governmentwide policy, oversight and guidance for Federal real property management. The Administrator of General Services shall issue standards, procedures, and guidelines for the conduct of surveys of real property holdings of Executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put

to their optimum use; and make reports describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property. The provisions of this subpart are presently limited to fee-owned properties and supporting leaseholds and lesser interests located within the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The scope of this subpart may be enlarged at a later date to include real property in additional geographical areas and other interests in real property.

[51 FR 193, Jan. 3, 1986]

§ 101-47.801 Standards.

Each executive agency shall use the following standards in identifying unneeded Federal property.

(a) *Definitions*—(1) *Not utilized*. “Not utilized” means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable executive agency, or occupied in caretaker status only.

(2) *Underutilized*. “Underutilized” means an entire property or portion thereof, with or without improvements:

(i) Which is used only at irregular periods or intermittently by the accountable executive agency for current program purposes of that agency; or

(ii) Which is used for current program purposes that can be satisfied with only a portion of the property.

(3) *Not being put to optimum use*. “Not being put to optimum use” means an entire property or portion thereof, with or without improvements, which:

(i) Even though utilized for current program purposes of the accountable executive agency is of such nature or value, or is in such a location that it could be utilized for a different significantly higher and better purpose; or

(ii) The costs of occupying are substantially higher than would be appli-

cable for other suitable properties that could be made available to the accountable executive agency through transfer, purchase, or lease with total net savings to the Government after consideration of property values as well as costs of moving, occupancy, efficiency of operations, environmental effects, regional planning, and employee morale.

(b) *Guidelines*. The following general guidelines shall be considered by each executive agency in its annual review (see § 101-47.802):

(1) Is the property being put to its highest and best use?

(i) Consider such aspects as surrounding neighborhood, zoning, and other environmental factors;

(ii) Is present use compatible with State, regional, or local development plans and programs?

(iii) Consider whether Federal use of the property would be justified if rental charge equivalent to commercial rates were added to the program costs for the function it is serving.

(2) Are operating and maintenance costs excessive compared with those of other similar facilities?

(3) Will contemplated program changes alter property requirements?

(4) Is all of the property essential for program requirements?

(5) Will local zoning provide sufficient protection for necessary buffer zones if a portion of the property is released?

(6) Are buffer zones kept to a minimum?

(7) Is the present property inadequate for approved future programs?

(8) Can net savings to the Nation be realized through relocation considering property prices or rentals, costs of moving, occupancy, and increase in efficiency of operations?

(9) Have developments on adjoining nonfederally owned land or public access or road rights-of-way granted across the Government-owned land rendered the property or any portion thereof unsuitable or unnecessary for program requirements?

(10) If Federal employees are housed in Government-owned residential property, is the local market willing to acquire Government-owned housing or can it provide the necessary housing

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and other related services that will permit the Government-owned housing area to be released? (Provide statistical data on cost and availability of housing on the local market.)

(11) Can the land be disposed of and program requirements satisfied through reserving rights and interests to the Government in the property if it is released?

(12) Is a portion of any property being retained primarily because the present boundaries are marked by the existence of fences, hedges, roads, and utility systems?

(13) Is any land being retained merely because it is considered undesirable property due to topographical features or to encumbrances for rights-of-way or because it is believed to be not disposable?

(14) Is land being retained merely because it is landlocked?

(15) Is there land or space in Government-owned buildings that can be made available for utilization by others within or outside Government on a temporary basis?

[35 FR 5261, Mar. 28, 1970, as amended at 37 FR 5030, Mar. 9, 1972; 40 FR 12079, Mar. 17, 1975]

§ 101-47.802 Procedures.

(a) *Executive agency annual review.* Each executive agency shall make an annual review of its property holdings.

(1) In making such annual reviews, each executive agency shall use the standards set forth in §101-47.801 in identifying property that is not utilized, is underutilized, or is not being put to its optimum use.

(2) A written record of the review of each individual facility shall be prepared. The written review record shall contain comments relative to each of the above guidelines and an overall map of the facility showing property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the requirement for and usage made of or proposed for individual parcels of the property. A copy of the review record shall be made available to GSA upon request or to the GSA survey representative at the time of the survey of each individual facility.

(3) Each executive agency shall, as a result of its annual review, determine, in its opinion, whether any portion of its property is not utilized, is underutilized, or is not being put to optimum use. With regard to each property, the following actions shall be taken:

(i) When the property or a portion thereof is determined to be not utilized, the executive agency shall:

(A) Initiate action to release the property; or

(B) Hold for a foreseeable future program use upon determination by the head of the executive agency. Such determination shall be fully and completely documented and the determination and documentation kept available for GSA review (see §101-47.802(b)(3)(ii)(B)). If property of this type which is being held for future use can be made available for temporary use by others, the executive agency shall notify the appropriate regional office of GSA before any permit or license for use is issued to another Federal agency or before any out-lease is granted by the executive agency. GSA will advise the executive agency whether the property should be permitted to another Federal agency for temporary use and will advise the executive agency the name of the Federal agency to whom the permit shall be granted.

(ii) When the property is determined to be underutilized, the executive agency shall:

(A) Limit the existing program to a reduced area and initiate action to release the remainder; or

(B) Shift present use imposed on the property to another property so that release action may be initiated for the property under review.

(iii) When, based on an indepth study and evaluation, it is determined that the property is not being put to its optimum use, the executive agency shall relocate the current program whenever a suitable alternate site, necessary funding, and legislative authority are available to accomplish that purpose. When the site, funding, or legislative authority are not available, a special report shall be made to the appropriate regional office of GSA for its consideration in obtaining possible assistance in accomplishing relocation.

(b) *GSA Survey.* Pursuant to section 2 of Executive Order 12512, GSA will conduct, on a continuing basis, surveys of real property holdings of all Executive agencies to identify properties which, in the judgment of the Administrator of General Services, are not utilized, are underutilized, or are not being put to their optimum use.

(1) GSA surveys of the real property holdings of executive agencies will be conducted by officials of the GSA Central Office and/or regional offices of GSA for the property within the geographical area of each region.

(i) The head of the field office of the agency having accountability for the facility will be notified in advance of a scheduled GSA survey and furnished at that time with copies of these regulations.

(ii) The head of that field office shall arrange for an appropriate official of the executive agency having necessary authority, and who is sufficiently knowledgeable concerning the property and current and future program uses of the property, to be available to assist the GSA representative in his survey.

(2) [Reserved]

(3) To facilitate the GSA survey, executive agencies shall:

(i) Cooperate fully with GSA in its conduct of the surveys; and

(ii) Make available to the GSA survey representative records and information pertinent to the description and to the current and proposed use of the property such as:

(A) Brief description of facilities (number of acres, buildings, and supporting facilities);

(B) The most recent utilization report or analysis made of the property including the written record of the annual review made by the agency, pursuant to §101-47.802(a), together with any supporting documents;

(C) Detail maps which show property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the usage made or proposed for individual parcels or the entire property; drawings; and layout plans.

(4) Upon receipt of notification of the pending GSA survey, the executive agency shall initiate action imme-

diately to provide the GSA representative with an escort into classified or sensitive areas or to inform that representative of steps that must be taken to obtain necessary special security clearances or both.

(5) Upon completion of the field work for the survey:

(i) The GSA representative will so inform the executive agency designated pursuant to 101-47.802(b)(1). To avoid any possibility of misunderstanding or premature publicity, conclusions and recommendations will not be discussed with this official. However, survey teams should discuss the facts they have obtained with local officials at the end of the survey to ensure that all information necessary to conduct a complete survey is obtained. The GSA representative will evaluate and incorporate the results of the field work into a survey report and forward the survey report to the GSA Central Office.

(ii) The GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the survey findings and/or recommendations. A copy of the survey report will be enclosed when a recommendation is made that some or all of the real property should be reported excess, and the comments of the Executive agency will be requested thereon. The Executive agency will be afforded 45 calendar days from the date of the notice in which to submit such comments. If the case is resolved, GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the resolution, and the case will be completed at such time as the agency completes all resolved excess and/or disposal actions. The agency will be afforded a period of 90 calendar days from the date of the notice to complete such actions.

(iii)-(iv) [Reserved]

(v) If the case is not resolved, the GSA Central Office will request assistance of the Executive Office of the President to obtain resolution.

[35 FR 5261, Mar. 28, 1970, as amended at 36 FR 7215, Apr. 16, 1971; 37 FR 5030, Mar. 9, 1972; 42 FR 40698, Aug. 11, 1977; 48 FR 25200, June 6, 1983; 51 FR 194, Jan. 3, 1986]

Subpart 101-47.9—Use of Federal Real Property To Assist the Homeless

SOURCE: 56 FR 23794, 23795, May 24, 1991, unless otherwise noted.

§ 101-47.901 Definitions.

Applicant means any representative of the homeless which has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government or a private non-profit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that 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. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices non-discrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to

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section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2).)

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a state contact person designated by a state to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in §101-47.906.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in §101-47.906.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 101-47.902 Applicability.

(a) This part applies to Federal real property which has been designated by

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Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of title V of the McKinney Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized).

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a Court Order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 101-47.903 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus, in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and 41 CFR part 101-47.800. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to

make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD, and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the FEDERAL REGISTER. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

EFFECTIVE DATE NOTE: Section 101-47.903 will not become effective until approved by the District Court for the District of Columbia pending further proceedings in the case *National Law Center on Homelessness and Poverty v. Dept. of Veterans Affairs*, No. 88-2503-OG (Dec. 12, 1988). (See 56 FR 23789, 23794 and, 23795, May 24, 1991. The General Services Administration will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 101-47.904 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in §101-47.903(a), HUD will determine, under criteria set forth in §101-47.906, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in §101-47.906.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of §101-47.907(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the FEDERAL REGISTER of a Notice of unsuitability to allow for

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review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the FEDERAL REGISTER that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1-800-927-7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the FEDERAL REGISTER.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in §101-47.901.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to §101-47.907(a), upon receipt of which HUD will promptly publish the determination in the FEDERAL REGISTER. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

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§ 101-47.905 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to §101-47.905(g) and will advise HUD of the availability of the property for use by the homeless as provided in §101-47.905(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in §101-47.905(c) through §101-47.905(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response which includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property, and therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the FEDERAL REGISTER, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in

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the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 101-47.203-5, 101-47.204-1 and 101-47.303-2.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in 41 CFR 101-47.402.

§ 101-47.906 Suitability criteria.

(a) All properties, buildings and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2000 feet of an industrial, commercial or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations and tank trucks are not included in this category and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located

within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100 year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

§ 101-47.907 Determination of availability.

(a) Within 45 days after receipt of a letter from HUD pursuant to §101-47.904(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property:

(i) An intention to declare the property excess,

(ii) An intention to make the property available for use to assist the homeless, or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in §101-47.906.

(2) In the case of excess property which had previously been reported to GSA:

(i) A statement that there is no compelling Federal need for the property,

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and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

§ 101-47.908 Public notice of determination.

(a) No later than 15 days after the last 45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the FEDERAL REGISTER a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

- (1) Properties that are suitable and available.
- (2) Properties that are suitable and unavailable.
- (3) Properties that are suitable and to be declared excess.
- (4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number, 1-800-927-7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the FEDERAL REGISTER. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD shall publish in the FEDERAL REGISTER a list of all properties reported pursuant to § 101-47.903(b).

(e) HUD shall publish an annual list of properties determined suitable but which agencies reported unavailable including the reasons such properties are not available.

(f) Copies of the lists published in the FEDERAL REGISTER will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

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§ 101-47.909 Application process.

(OMB approval number 09370191)

(a) *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the FEDERAL REGISTER.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60 day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address:

Director, Division of Health Facilities Planning, Public Health Service, room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60 day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

- (i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a “representative of the homeless,” as specified in §101-47.901 of this subpart. The applicant must document its authority to hold real property. Private non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions except for local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Non-

discrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant’s proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to §101-47.90 9(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for completeness, and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations which have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance.

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that

fact by Federal, State, and local authorities.

(v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in §101-47.908(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

§ 101-47.910 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 41 CFR 101-47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and

other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 101-47.909 of this part and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

§ 101-47.911 Unsuitable properties.

The landholding agency will defer, for 20 days after the date that notice of a property is published in the FEDERAL REGISTER, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 101-47.904(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ 101-47.912 No applications approved.

(a) At the end of the 60 day holding period described in § 101-47.909(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

Subparts 101-47.10—101-47.48 [Reserved]

Subpart 101-47.49—Illustrations

§ 101-47.4900 Scope of subpart.

This subpart sets forth certain forms and illustrations referred to previously in this part. Agency field offices should obtain the GSA forms prescribed in this subpart by submitting their future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (BRAAF), Washington, DC 20405. Standard forms should be obtained from the

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nearest GSA supply distribution facility.

[40 FR 12080, Mar. 17, 1975]

§ 101-47.4901 [Reserved]

§ 101-47.4902 Standard Form 118, Report of Excess Real Property.

§ 101-47.4902-1 Standard Form 118a, Buildings, Structures, Utilities, and Miscellaneous Facilities.

§ 101-47.4902-2 Standard Form 118b, Land.

§ 101-47.4902-3 Standard Form 118c, Related Personal Property.

§ 101-47.4902-4 Instructions for the preparation of Standard Form 118, and Attachments, Standard Forms 118a, 118b, and 118c.

§ 101-47.4904 GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

NOTE: The illustrations in §101-47.4904 are filed as part of the original document and do not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

§ 101-47.4904-1 Instructions for preparation of GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

NOTE: The illustrations in §101-47.4904-1 are filed as part of the original document and do not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

§ 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

Statute: 16 U.S.C. 667b-d. Disposals for wildlife conservation purposes.

Type of property*: Any surplus real property (with or without improvements) that can be utilized for wildlife conservation purposes other than migratory birds, exclusive of (1) oil, gas, and mineral rights, and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: The agency of the State exercising the administra-

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tion of the wildlife resources of the State.

Statute: 23 U.S.C. 107 and 317. Disposals for Federal aid and other highways.

Type of property*: Any real property or interests therein determined by the Secretary of Transportation to be reasonably necessary for the right-of-way of a Federal aid or other highway (including control of access thereto from adjoining lands) or as a source of material for the construction or maintenance of any such highway adjacent to such real property or interest therein, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State wherein the property is situated (or such political subdivision of the State as its law may provide), including the District of Columbia and Commonwealth of Puerto Rico.

Statute: 40 U.S.C. 122. Transfer to the District of Columbia of jurisdiction over properties within the District for administration and maintenance under conditions to be agreed upon.

Type of property: Any surplus real property, except property for which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: District of Columbia.

Statute: 40 U.S.C. 345c. Disposals for authorized widening of public highways, streets, or alleys.

Type of property*: Such interest in surplus real property as the head of the disposal agency determines will not be adverse to the interests of the United States, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal for Federal aid and other highways under the provisions of 3 U.S.C. 107 and 317; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State or political subdivision of a State.

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Statute: 40 U.S.C. 484(e)(3)(H). Disposals by negotiations.

Type of property: Any surplus real property including related personal property.

Eligible public agency: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported agency in any of them.

Statute: 40 U.S.C. 484(k)(1)(A). Disposals for school, classroom, or other educational purposes.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported educational institution in any of them.

Statute: 40 U.S.C. 484(k)(1)(B). Disposals for public health purposes including research.

Type of property*: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported medical institution in any of them.

Statute: 40 U.S.C. 484(k)(2). Disposals for public park or recreation areas.

Type of property*: Any surplus real property recommended by the Secretary of the Interior as being needed for use as a public park or recreation area, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(3). Disposals for historic monuments.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Interior must determine that the property is suitable and desirable for use as a historic monument for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments established by section 3 of the act entitled "An Act for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved Aug. 21, 1935 (49 Stat. 666), and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and property observation of its historic features. The Administrator of General Services may authorize the use of the property conveyed under this subsection for revenue-producing activities if the Secretary of the Interior (1) determines that such activities are compatible with use of the property for historic monument purposes, (2) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, (3) approves grantee's plan for financing repairs, rehabilitation, restoration, and maintenance of the property which must provide that incomes in excess of the costs of such items shall be used by the grantee only for public historic preservation, park, or recreational purposes,

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and (4) approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(6). Disposals for self-help housing and housing assistance.

Type of property*: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Housing and Urban Development must recommend that the property is needed for providing self-help housing or housing assistance for low-income individuals or families.

Eligible public agencies: Any State, any political subdivision or instrumentality of a State, or any nonprofit organization that exists for the primary purpose of providing self-help housing or housing assistance for low-income individuals or families.

Statute: 40 U.S.C. 484(p). Disposals for correctional facility, law enforcement, or emergency management response purposes.

Type of property*: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use under an appropriate program or project approved by the Attorney General for the care or rehabilitation of criminal offenders or for law enforcement use. Before property may be conveyed under this statute for emergency management response use,

the Director of the Federal Emergency Management Agency must determine that the property is required for such use.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any political subdivision or instrumentality thereof.

Statute: 40 U.S.C. 484(q). Disposals for port facility purposes.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of Transportation must determine, after consultation with the Secretary of Labor, that the property is located in an area of serious economic disruption; and approve, after consultation with the Secretary of Commerce, an economic development plan associated with the plan of use of the property.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 49 U.S.C. 47151. Disposals for public airport purposes.

Type of property*: Any surplus real or personal property, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal as a historic monument site under the provisions of Sec. 101-47.308-3; (3) property the highest and the best use of which is determined by the disposal agency to be industrial and which shall be so classified for disposal, and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State, the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 50 U.S.C. App. 1622(d). Disposals of power transmission lines needful for or adaptable to the requirements of a public power project.

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Type of property*: Any surplus power transmission line and the right-of-way acquired for its construction.

Eligible public agency: Any State or political subdivision thereof or any State agency or instrumentality.

*The Commissioner, Public Buildings Service, General Services Administration, Washington, DC 20405, in appropriate instances, may waive any exclusions listed in this description, except for those required by law.

[60 FR 35708, July 11, 1995, as amended at 64 FR 5619, Feb. 4, 1999]

§ 101-47.4906 Sample notice to public agencies of surplus determination.

NOTICE OF SURPLUS DETERMINATION—
GOVERNMENT PROPERTY

(Date)

(Name of property)

(Location)

Notice is hereby given that the above described property has been determined to be surplus Government property. The property consists of _____ acres of fee land, more or less, together with easements and improvements as follows:

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended, certain related laws, and applicable regulations. The applicable regulations provide that non-Federal public agencies shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses listed below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations. (NOTE: List only those statutes and types of disposal appropriate to the particular surplus property described in the notice.)

- 16 U.S.C. 667b- Wildlife conservation.
- d.
- 20 U.S.C. 107 Federal aid and certain and 317. other highways.

- 40 U.S.C. 122 .. Transfer to the District of Columbia.
- 40 U.S.C. 345c Widening of highways, streets, or alleys.
- 40 U.S.C. 484(e)(3)(H). Negotiated sales for general public purpose uses. (NOTE: This statute should not be listed if the affected surplus property has an estimated value of less than \$10,000.)
- 40 U.S.C. 484(k)(1)(A). School, classroom, or other educational purposes.
- 40 U.S.C. 484(k)(1)(B). Protection of public health, including research.
- 40 U.S.C. 484(k)(2). Public park or recreation area.
- 40 U.S.C. 484(k)(3). Historic monument.
- 40 U.S.C. 484(k)(6). Self-help housing and housing assistance.
- 40 U.S.C. 484(p). Correctional facility, law enforcement, or emergency management response.
- 40 U.S.C. 484(q). Port facility.
- 49 U.S.C. 47151 Public airport.
- 50 U.S.C. App. 1622(d). Power transmission lines.

If any public agency desires to acquire the property under any of the cited statutes, notice thereof must be filed in writing with

(Insert name and address of disposal agency):

Such notice must be filed not later than ____
(Insert date of the 21st day following the date of the notice.)

- Each notice so filed shall:
- (a) Disclose the contemplated use of the property;
 - (b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;
 - (c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;
 - (d) State the length of time required to develop and submit a formal application for the property. (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds.); and
 - (e) Give the reason for the time required to develop and submit a formal application.

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Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

Application forms or instructions to acquire property for the public uses listed in this notice may be obtained by contacting the following Federal agencies for each of the indicated purposes:

NOTE: For each public purpose statute listed in this notice, show the name, address, and telephone number of the Federal agency to be contacted by interested public body applicants.)

[60 FR 35710, July 11, 1995, as amended at 64 FR 5619, Feb. 4, 1999]

§ 101-47.4906a Attachment to notice sent to zoning authority.

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED

TITLE VIII—URBAN LAND UTILIZATION

DISPOSAL OF URBAN LANDS

SEC. 803

(a) Whenever the Administrator contemplates the disposal for or on behalf of any Federal agency of any real property situated within an urban area, he shall, prior to offering such land for sale, give reasonable notice to the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulation in the geographical area within which the land or lands are located in order to afford the government the opportunity of zoning for the use of such land in accordance with local comprehensive planning.

(b) The Administrator, to the greatest practicable extent, shall furnish to all prospective purchasers of such real property, full and complete information concerning:

(1) Current zoning regulations and prospective zoning requirements and objectives for such property when it is unzoned; and

(2) Current availability to such property of streets, sidewalks, sewers, water, street lights, and other service facilities and prospective availability of such services if such property is included in comprehensive planning.

[34 FR 11210, July 3, 1969]

§ 101-47.4906b Paragraph to be added to letter sent to zoning authority.

As the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulations in the geographical area within which this surplus property is located, you also may be interested in section 803 of the Federal Property and Administrative Services Act of 1949, as amended, 82 Stat. 1105, a copy of which is attached for ready reference. It is requested that the information contemplated by section 803(b) be forwarded this office within the same 20-calendar-day period prescribed in the attached notice of surplus determination for the advising of a desire to acquire the property. If the property is unzoned and you desire the opportunity to accomplish such zoning in accordance with local comprehensive planning pursuant to section 803(a), please so advise us in writing within the same time frame and let us know the time you will require for the promulgation of such zoning regulations. We will not delay sale of the property pending such zoning for more than 50 days from the date of this notice. However, if you will not be able to accomplish the desired zoning before the property is placed on sale, we will advise prospective purchasers of the pending zoning in process.

[34 FR 11210, July 3, 1969]

§ 101-47.4906-1 Sample letter for transmission of notice of surplus determination.

(Date)

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

(Addressee)

Dear _____: The former _____ (Name of property), _____ (Location) has been determined to be surplus Government property and available for disposal.

Included in the attached notice are a description of the property and procedural instructions to be followed if any public agency desires to submit an application for the property. Please note particularly the name and address given for filing written notice if

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any public agency desires to submit such an application, the time limitation within which written notice must be filed, and the required content of such notice. Additional instructions are provided for the submission of comments regarding any incompatibility of the disposal with any public agency's development plans and programs.

In order to ensure that all interested parties are informed of the availability of this property, please post the additional copies of the attached notice in appropriate conspicuous places.¹

A notice of surplus determination also is being mailed to _____ (Other addressees).

Sincerely,

Attachment

[34 FR 11211, July 3, 1969, as amended at 35 FR 8487, June 2, 1970]

§ 101-47.4906-2 Sample letter to a State single point of contact.

(Date)

(Addressee)

Dear: _____

On July 14, 1982, the President issued Executive Order 12372, "Intergovernmental Review of Federal Programs." This Executive order provides for State and local government coordination and review of certain proposed Federal programs and activities, including real property disposal actions of the General Services Administration.

Enclosed is a notice of surplus determination that has been sent to appropriate public bodies advising them of the availability of the described real property for public purposes. Surplus Federal real property which is not acquired for State or local governmental public purposes is generally offered for sale to the general public by competitive bidding procedures.

No final disposal action will be taken for 60 calendar days from the date of this letter to allow for the receipt of any comments from your office.

[52 FR 9831, Mar. 27, 1987]

§ 101-47.4907 List of Federal real property holding agencies.

NOTE: The illustrations in §101-47.4907 are filed as part of the original document and do

¹Attach as many copies of the notice as may be anticipated will be required for adequate posting.

not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

§ 101-47.4908 Excess profits covenant.

EXCESS PROFITS COVENANT FOR NEGOTIATED SALES TO PUBLIC BODIES

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

- (1) The purchase price of the real property;
- (2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;
- (3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and
- (4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

- (1) A description of each portion of the property that has been resold;
- (2) The sale price of each such resold portion;
- (3) The identity of each purchaser;
- (4) The proposed land use; and

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(5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

[51 FR 23760, July 1, 1986]

§ 101-47.4909 Highest and best use.

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

- Industrial
Single family residential
Multiple family residential
Commercial/retail
Warehouse
Agriculture
Institutional or public use

Other (specify)

- Not zoned
Zoning proceeding pending Federal disposal

Category proposed

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services,

access, environmental and historical aspects, and other significant factors)

(3) Area/neighborhood uses (check one or more as appropriate).

- Single family residential
Multiple family residential
Industrial
Office
Retail or commercial
Farmland
Recreational/park area

Other (specify)

(4) Existing neighboring improvements (check one or more as appropriate).

- Deteriorating
Stable
Some recent development
Significant recent development

Vicinity improvements:
Dense Moderate Sparse None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

- Severe slope or soil instability
Road access
Access to sanitary sewers or storm sewers
Access to water supply
Location within or near floodplain
Wetlands
Tidelands
Irregular shape
Present lease agreement or other possessory non-Federal interest
Historic, archeological or cultural
Contamination or other hazards

Other (specify)

Comments on adverse conditions

(6) Former Government uses (check one or more as appropriate).

- Office
Industrial
Warehouse or storage
Residential
Retail/commercial
Agricultural

Specify other uses below, such as airport, health, education, recreation and special military facilities—

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(c) Determination of highest and best use (check one or more as appropriate).

Single family residential _____

Multiple family residential _____

Industrial _____

Office _____

Retail or commercial _____

Agricultural _____

Warehouse/storage _____

Transportation _____

Historic monument _____

Recreation/park _____

Health _____

Education or related institutional use _____

Airport _____

Wildlife Conservation _____

Public utility _____

Other (include general public or governmental).

Remarks: _____

(d) Are significant costs required to make property conform to highest and best use (i.e. demolition of existing improvements, relocation of existing improvements, etc.)?

Remarks: _____

(e) Can a knowledgeable cost estimate be given in reference to paragraph d above? (Enter figure).

Yes (\$ _____) _____

No _____

(f) Is the property located adjacent to or inside the boundaries of a State park, forest or recreational area?

Yes _____

No _____

Remarks _____

[49 FR 37091, Sept. 21, 1984]

§ 101-47.4910 Field offices of Department of Health, Education, and Welfare.

NOTE: The illustrations in §101-47.4910 are filed as part of the original document and do not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

§ 101-47.4911 Outline for explanatory statements for negotiated sales.

NOTE: The illustration listed in § 101-47.4911 is filed as part of the original document and does not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[42 FR 31455, June 21, 1977]

§ 101-47.4912 Regional offices of the Bureau of Outdoor Recreation, Department of the Interior.

Address communications to: Regional Director, Bureau of Outdoor Recreation, Department of the Interior.

Region and jurisdiction	Address and telephone
Northeast region: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and District of Columbia.	Federal Bldg., 600 Arch St., Philadelphia, Pa. 19106. Code 215, 597-7989
Southeast region: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.	148 Cain St., Atlanta, Ga. 30303. Code 404, 526-4405.
Lake Central region: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin	3853 Research Park Dr., Ann Arbor, Mich. 48104. Code 313, 769-3211
Midcontinent region: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Building 41, Denver Federal Center, P.O. Box 25387, Denver, Colo. 80225. Code 303, 234-2634
South Central region: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	Patio Plaza Bldg., 5000 Marble Ave., NE., Albuquerque, N. Mex. 87110. Code 505, 843-3514
Northwest region: Alaska, Idaho, Oregon, and Washington	United Pacific Bldg., 1000 Second Ave., Seattle, Wash. 98104. Code 206, 442-4706
Pacific Southwest region: American Samoa, Arizona, California, Guam, Hawaii, and Nevada.	Box 36062, 450 Golden Gate Ave., San Francisco, Calif. 94102. Code 415, 556-0182

[40 FR 22260, May 22, 1975]

§ 101-47.4913 Outline for protection and maintenance of excess and surplus real property.

A. *General.* In protecting and maintaining excess and surplus properties, the adoption of the principle of "calculated risk" is considered to be essential. In taking what is termed a "calculated risk," the expected losses and deteriorations in terms of realizable values are anticipated to be less in the overall than expenditures to minimize the risks. In determining the amount of protection to be supplied under this procedure, a number of factors should be considered; such as, the availability of, and the distance to, local, public, or private protection facilities; the size and value of the facility; general characteristics of structures; physical protection involving fencing, number of gates, etc.; the location and availability of communication facilities; and the amount and type of activity at the facility. Conditions at the various excess and surplus properties are so diverse that it is impracticable to establish a definite or fixed formula for determining the extent of protection and maintenance that should be applied. The standards or criteria set forth in B and C, below, are furnished as a guide in making such determinations.

B. *Protection Standards.* The following standards are furnished as a guide in determining the amount and limits of protection.

1. *Properties not Requiring Protection Personnel.* Fire protection or security personnel are not needed at:

- (a) Facilities where there are no structures or related personal property;
- (b) Facilities where the realizable or recoverable value of the improvements and related personal property subject to loss is less than the estimated cost of protection for a one-year period;
- (c) Facilities of little value located within public fire and police department limits, which can be locked or boarded up;
- (d) Facilities where the major buildings are equipped with automatic sprinklers, supervised by American District Telegraph Company or other central station service, which do not contain large quantities of readily removable personal property, and which are in an area patrolled regularly by local police; and
- (e) Facilities where agreements can be made with a lessee of a portion of the property to protect the remaining portions at nominal, or without additional cost.

2. *Properties Requiring a Resident Custodian.* A resident custodian or guard only is required at facilities of the following classes:

- (a) Facilities containing little removable personal property but having a considerable

number of buildings to be sold for off-site use when (a) the buildings are of low realizable value and so spaced that loss of more than a few buildings in a single fire is improbable, or (b) the buildings are so located that water for firefighting purposes is available and municipal or other fire department services will respond promptly;

- (b) Small, inactive industrial and commercial facilities which must be kept open for inspection and which are so located that public fire and police protection can be secured by telephone;

- (c) Facilities where the highest and best use has been determined to be salvage; and

- (d) Facilities of little, or salvage, value but potentially dangerous and attractive to children and curiosity seekers where the posting of signs is not sufficient to protect the public.

3. *Properties Requiring Continuous Guard Service.* One guard on duty at all times (a total of 5 guards required) is required at facilities of high market value which are fenced; require only one open gate which can be locked during patrols; all buildings of which can be locked; and where local police and fire protection can be secured by telephone.

4. *Properties Requiring High Degree of Protection.* More than one firefighter-guard will be required to be on duty at all times at facilities of the classes listed below. The number, and the assignment, of firefighter-guards in such cases should be determined by taking into consideration all pertinent factors.

- (a) Facilities of high market value which are distant from public assistance and require an on-the-site firefighting force adequate to hold fires in check until outside assistance can be obtained.

- (b) Facilities of high market value which can obtain no outside assistance and require an on-the-site firefighting force adequate to extinguish fires.

- (c) Facilities of high market value at which the patrolling of large areas is necessary.

- (d) Facilities of high market value not fenced and containing large quantities of personal property of a nature inviting pilferage.

- (e) Facilities of high market value at which several gates must be kept open for operating purposes.

5. *Standards for All Protected Properties.*

- (a) All facilities within the range of municipal or other public protection, but outside the geographic limits of such public body, should be covered by advance arrangements with appropriate authorities for police and fire protection service, at a monthly or other service fee if necessary.

(b) Patrolling of all facilities with large areas to be protected should be accomplished by use of automotive vehicles.

(c) At fenced facilities, a minimum number of gates should be kept open.

6. *Firefighter-Guards.* Firefighters and guards are the normal means for carrying out the fire protection and security programs at excess and surplus real properties where both such programs are required. The duties of firefighters and guards should be combined to the maximum extent possible in the interest of both economy and efficiency. Such personnel would also be available in many cases for other miscellaneous services, such as, removing grass and weeds or other fire hazards, servicing fire extinguishers, and other activities related to general protection of property.

7. *Operating Requirements of Protection Units.* Firefighter-guards or guards, should be required to make periodic rounds of facilities requiring protection. The frequency of these rounds would be based upon a number of factors; such as, location and size of the facility, type of structures and physical barriers, and the amount and type of activity at the facility. There may be instances where some form of central station supervision, such as American District Telegraph Company, will effect reduction in costs by reducing the number of firefighter-guards, or guards, required to adequately protect the premises.

8. *Watchman's Clock.* To insure adequate coverage of the entire property by the guards, or firefighter-guards, an approved watchman's clock should be provided, with key stations strategically located so that, in passing from one to the other, the guards will cover all portions of the property.

9. *Protection Alarm Equipment.* Automatic fire detection devices and allied equipment and services may materially assist in minimizing protection costs. However, use of devices of this type, like guards, are purely secondary fire protection and are primarily a means of obtaining fire and police protection facilities at the property in an emergency. There are various types of devices, each of which can be considered separately or in combination as supplementing guard patrols, which may assist in reduction of costs and, in some instances, it may be possible to eliminate all guards.

10. *Sentry Dogs.* Frequently there are facilities of high market value, or which cover large areas, or are so isolated that they invite intrusion by curiosity seekers, hunters, vagrants, etc., which require extra or special protection measures. This has usually been taken care of by staffing with additional guards so that the "buddy system" of patrolling may be used. In such cases, the use of sentry dogs should be considered in arriving at the appropriate method of offsetting the need for additional guards, as well as pos-

sible reductions in personnel. If it is determined to be in the Government's interest to use this type of protection, advice should be obtained as to acquisition (lease, purchase, or donation), training, use, and care, from the nearest police department using sentry dogs. When sentry dogs are used, the property should be clearly posted "Warning—This Government Property Patrolled by Sentry Dogs."

C. *Maintenance Standards.* The following standards or criteria are furnished as a guide in connection with the upkeep of excess and surplus real properties:

1. *Temporary Type Buildings and Structures.* Temporary buildings housing personal property which cannot be readily removed to permanent type storage should be maintained only to the extent necessary to protect the personal property. Vacant temporary structures should not be maintained except in unusual circumstances.

2. *Permanent Type Buildings and Structures.* (a) No interior painting should be done. Where exterior wood or metal surfaces require treatment to prevent serious deterioration, spot painting only should be done when practicable.

(b) Carpentry and glazing should be limited to: work necessary to close openings against weather and pilferage; making necessary repairs to floors, roofs, and sidewalls as a protection against further damage; shoring and bracing of structures to preclude structural failures; and similar operations.

(c) Any necessary roofing and sheet metal repairs should, as a rule, be on a patch basis.

(d) Masonry repairs, including brick, tile, and concrete construction, should be undertaken only to prevent leakage or disintegration, or to protect against imminent structural failure.

(e) No buildings should be heated for maintenance purposes except in unusual circumstances.

3. *Mechanical and Electrical Installations.* These include plumbing, heating, ventilating, air conditioning, sprinkler systems, fire alarm systems, electrical equipment, elevators, and similar items.

(a) At facilities in inactive status, maintenance of mechanical and electrical installations should be limited to that which is necessary to prevent or arrest serious deterioration. In most cases, personnel should not be employed for this work except on a temporary basis at periodic intervals when it is determined by inspections that the work is necessary. Wherever possible electrical systems should be deenergized, water drained from all fixtures, heat turned off, and buildings secured against unauthorized entry. Sprinkler systems should be drained during freezing weather and reactivated when danger of freezing has passed.

(b) At facilities in active status, such as multiple-tenancy operations, equipment

should be kept in reasonable operating condition. Operation of equipment to furnish services to private tenants, as well as the procurement of utility services for distribution to tenants, should be carried on only to the extent necessary to comply with lease or permit conditions, or in cases where it is impracticable for tenants to obtain such services directly from utility companies or other sources.

(c) At facilities where elevators and/or high-pressure boilers and related equipment are in operation, arrangements should be made for periodic inspections by qualified and licensed inspectors to insure that injury to personnel, loss of life, or damage to property does not occur.

(d) Individual heaters should be used, when practicable, in lieu of operating heating plants.

4. *Grounds, Roads, Railroads, and Fencing.*

(a) Maintenance of grounds should be confined largely to removal of vegetation where necessary to avoid fire hazards and to control poisonous and noxious plant growth in accordance with local and State laws and regulations; plowing of fire lanes where needed; and removal of snow from roads and other areas only to the extent necessary to provide access for maintenance, fire protection, and similar activities. Wherever practicable, hay crops should be sold to the highest bidders with the purchaser performing all labor in connection with cutting and removal. Also, agricultural and/or grazing leases may be resorted to, if practicable, as other means of reducing the cost of grounds maintenance. Any such leases shall be subject to the provisions of § 101-47.203-9 or § 101-47.312.

(b) Only that portion of the road network necessary for firetruck and other minimum traffic should be maintained. The degree to which such roads are to be maintained should be only that necessary to permit safe passage at a reasonable speed.

(c) Railroads should not be maintained except as might be required for protection and maintenance operations, or as required under the provisions of a lease or permit.

(d) Ditches and other drainage facilities should be kept sufficiently clear to permit surface water to run off.

(e) Fencing, or other physical barrier, should be kept in repair sufficiently to afford protection against unauthorized entry.

5. *Utilities.* (a) At inactive properties, water systems, sewage disposal systems, electrical distribution systems, etc., should be maintained only to the extent necessary to provide the minimum services required. Buildings or areas not requiring electrical service or water should be deenergized electrically and the water valved off. Utilities not in use, or which are serving dismantled or abandoned structures, should not be maintained.

(b) At active properties, water supply, electrical power, and sewage disposal facilities frequently must be operated at rates much below designed capacities. Engineering studies should determine the structural and operating changes necessary for maximum economy. Where leakage is found in water distribution lines, such lines may be valved off rather than repaired, unless necessary for fire protection or other purposes.

(c) Where utilities are purchased by contract, such contracts should be reviewed to determine if costs can be reduced by revision of the contracts.

6. *Properties to be Disposed of as Salvage.* No funds should be expended for maintenance on properties where the highest and best use has been determined to be salvage.

D. *Repairs.* Repairs should be limited to those additions or changes that are necessary for the preservation and maintenance of the property to deter or prevent excessive, rapid, or dangerous deterioration or obsolescence and to restore property damaged by storm, flood, fire, accident, or earthquake only where it has been determined that restoration is required.

E. *Improvements.* No costs should be incurred to increase the sales value of a property, and no costs should be incurred to make a property disposable without the prior approval of GSA. (See § 101-47.401-5.)

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965]

§ 101-47.4914 Executive Order 12512.

NOTE: The illustrations in § 101-47.4914 are filed as part of the original document and do not appear in this volume.

[50 FR 194, Jan. 3, 1986]

PART 101-48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

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- 101-48.4901 [Reserved]

- 101-48.4902 GSA forms.
- 101-48.4902-18 GSA Form 18, Application of Eleemosynary Institution.

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

SOURCE: 42 FR 55813, Oct. 19, 1977, unless otherwise noted.

§ 101-48.000 Scope of part.

This part prescribes the policies and methods governing the utilization, donation, and disposal of abandoned and forfeited personal property under the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. In addition to the requirements of this part 101-48, the disposition of abandoned and forfeited hazardous materials shall be accomplished in accordance with part 101-42.

[57 FR 39137, Aug. 28, 1992]

§ 101-48.001 Definitions.

For the purposes of this part 101-48, the following terms shall have the meanings set forth in this section.

§ 101-48.001-1 Abandoned or other unclaimed property.

Abandoned or other unclaimed property means personal property that is found on premises owned or leased by the Government and which is subject to the filing of a claim therefor by the former owner(s) within 3 years from the vesting of title in the United States.

§ 101-48.001-2 Distilled spirits.

Distilled spirits, as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), as now in force or hereafter amended, means ethyl alcohol; hydrated oxide of ethyl; or spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof.

§ 101-48.001-3 Eleemosynary institution.

Eleemosynary institution means a non-profit institution organized and operated for charitable purposes whose net income does not inure in whole or in part to the benefit of shareholders or

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individuals and which shall have filed with the GSA National Capital Region a satisfactory statement establishing such status.

[56 FR 40260, Aug. 14, 1991]

§ 101-48.001-4 Firearms.

Firearms, as defined in 18 U.S.C. 921, as now in force or hereafter amended, means any weapon (including a starter gun) which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon or any firearm muffler or firearm silencer; or any destructive device. This term does not include an antique firearm.

§ 101-48.001-5 Forfeited property.

Forfeited property means personal property acquired by a Federal agency either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States.

§ 101-48.001-6 Malt beverages.

Malt beverages, as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), as now in force or hereafter amended, means beverages made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops or their parts or products and with or without other malted cereals; and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom; and with or without the addition of carbon dioxide; and with or without other wholesome products suitable for human food consumption.

§ 101-48.001-7 Property.

Property means all personal property, including but not limited to vessels, vehicles, aircraft, distilled spirits, wine, and malt beverages.

§ 101-48.001-8 Voluntarily abandoned property.

Voluntarily abandoned property means personal property abandoned to a Federal agency in such a manner as to vest title thereto in the United States.

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§ 101-48.001-9 Wine.

Wine means any of the wines defined in sections 5381 and 5385 of the Internal Revenue Code of 1954 (26 U.S.C. 5381, 5385), as now in force or hereafter amended, and other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine; wine made from condensed grape must; wine made from agricultural products other than the juice of sound, ripe grapes; imitation wine; compounds sold as wine; vermouth; cider; perry; and sake. The alcoholic content of these beverages shall not contain less than 7 percent nor more than 24 percent of alcohol by volume and shall not be for industrial use.

§ 101-48.001-10 Drug paraphernalia.

Drug paraphernalia means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Pub. L. 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as:

- (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) Water pipes;
- (3) Carburetion tubes and devices;
- (4) Smoking and carburetion masks;
- (5) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (6) Miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) Chamber pipes;
- (8) Carburetor pipes;
- (9) Electric pipes;
- (10) Air-driven pipes;
- (11) Chillums;
- (12) Bong;

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- (13) Ice pipes or chillers;
- (14) Wired cigarette papers; or
- (15) Cocaine freebase kits.

[56 FR 40260, Aug. 14, 1991]

Subpart 101-48.1—Utilization of Abandoned and Forfeited Personal Property

§ 101-48.100 Scope of subpart.

This subpart 101-48.1 prescribes the policies and methods for utilization and transfer within the Government of forfeited or voluntarily abandoned personal property subject to the provisions of 40 U.S.C. 304f through m, and abandoned and other unclaimed property found on premises owned or leased by the Government subject to the provisions of 40 U.S.C. 484(m), which may come into the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, and Trust Territory of the Pacific Islands, or the Virgin Islands. Property in this category located elsewhere shall be utilized and transferred in accordance with the regulations of the agency having custody thereof. This subpart also governs seized and forfeited drug paraphernalia under the provisions of 21 U.S.C. 857(c).

[56 FR 40260, Aug. 14, 1991]

§ 101-48.101 Forfeited or voluntarily abandoned property.

Forfeited or voluntarily abandoned property, subject to the provisions of 40 U.S.C. 304(f) through m, except as otherwise indicated in this subpart 101-48.1, shall be reported and handled in the same manner as excess property under subpart 101-43.3.

§ 101-48.101-1 Sources of property available for utilization.

Property available for utilization under § 101-48.101 is property which is in the custody or under the control of any agency of the U.S. Government, as a result of forfeiture or voluntary abandonment.

§ 101-48.101-2 Custody of property.

(a) GSA generally will not take possession of property that is forfeited or voluntarily abandoned. Such property

shall remain in the custody of and be the responsibility of the holding agency.

(b) GSA will direct the disposition of forfeited firearms that are subject to the disposal provisions of 26 U.S.C. 5872(b). GSA authorizes the retention of any such firearm by the Secretary of the Treasury or his delegate for official use.

(c) GSA will direct the disposition of distilled spirits, wine, and malt beverages that are forfeited other than by court decree or by order of a court:

(1) By transfer to Government agencies which have a need for such beverages for medicinal, scientific, or mechanical purposes, or for any other purpose for which appropriated funds may be expended by a Government agency;

(2) By donation to eleemosynary institutions (as defined in § 101-48.001-3) which have a need for such beverages for medicinal purposes; or

(3) By destruction.

(d) GSA will direct the disposition of forfeited drug paraphernalia that is subject to the disposal provisions of 21 U.S.C. 857(c) by ordering such paraphernalia destroyed or by authorizing its use for law enforcement or educational purposes by Federal, State, or local authorities.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40260, Aug. 14, 1991]

§ 101-48.101-3 Cost of care and handling.

Each holding agency shall be responsible for performing care and handling of forfeited or voluntarily abandoned personal property pending disposition.

§ 101-48.101-4 Retention by holding agency.

(a) Subject to the limitations on certain types of passenger vehicles (see § 101-43.307-9), a Federal agency may retain and devote to official use any property in its custody that is forfeited other than by court decree or determined by the agency to be voluntarily abandoned. Large sedans and limousines may be retained by an agency and devoted to official use only if such retention is clearly authorized by the provisions of subpart 101-38.1.

(b) A holding agency, when reporting property pursuant to § 101-48.101-5,

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which is subject to pending court proceedings for forfeiture, may at the same time file a request for that property for its official use. A request for only components or accessories of a complete and operable item shall contain a detailed justification concerning the need for the components or accessories and an explanation of the effect their removal will have on the item. Upon receipt of a request, GSA will make application to the court requesting delivery of the property to the holding agency, provided that, when a holding agency has requested only components or accessories of a complete and operable item, GSA determines that their removal from the item is in the best interest of the Government.

(c) Except where otherwise specifically provided, any property that is retained by a Federal agency for official use under this subpart 101-48.1 shall thereupon lose its identity as forfeited or voluntarily abandoned property. When such property is no longer required for official use, it shall be reported as excess in accordance with § 101-43.304.

(Sec. 307, 49 Stat. 880; 40 U.S.C. 3041)

[42 FR 55813, Oct. 19, 1977, as amended at 44 FR 42202, July 19, 1979; 56 FR 40260, Aug. 14, 1991]

§ 101-48.101-5 Property required to be reported.

(a) A Federal agency shall promptly report, in accordance with § 101-43.304, property in its custody that is forfeited other than by court decree or voluntarily abandoned and not desired for retention by that agency for its official use and property on which proceedings for forfeiture by court decree are being started or have begun, except that:

(1) Reports shall be submitted to the GSA National Capital Region (mailing address: General Services Administration (3FBP-W), Washington, DC 20407) in lieu of being submitted to the GSA regional office for the region in which the property is located.

(2) The reporting agency's internal documents containing information relevant to the property may be used in lieu of the Standard Form 120, Report of Excess Personal Property; and

(3) Distilled spirits, wine and malt beverages fit for human consumption in quantities of 5 wine gallons or more shall be reported regardless of acquisition cost.

(b) The following information shall be furnished:

(1) Whether property was:

(i) Abandoned;

(ii) Forfeited other than by court decree; or

(iii) The subject of a court proceeding and, if so, the name of the defendant and the place and judicial district of the court from which the decree has been or will be issued;

(2) Existence or probability of a lien or claim of lien, or other accrued or accruing charges, and the amount involved; and

(3) If the property is distilled spirits, wine, or malt beverages: Quantities and kinds (rye or bourbon or other whiskey and its brand, if any; sparkling or still wine and its color or brand; cordial, brandy, gin, etc.), proof rating, and condition for shipping.

(c) In addition to the exceptions and special handling described in §§ 101-43.305 and 101-43.307, the following forfeited or voluntarily abandoned property need not be reported:

(1) Forfeited arms or munitions of war which are handled pursuant to 22 U.S.C. 401;

(2) Forfeited firearms which are transferable by the holding agency to the Secretary of Defense;

(3) Abandoned, condemned, or forfeited tobacco, snuff, cigars, or cigarettes which the holding agency estimates will not, if offered for sale by competitive bid, bring a price equal to the internal revenue tax due and payable thereon; and which is subject to destruction or delivery without payment of any tax to any hospital maintained by the United States for the use of present or former members of the military or naval forces of the United States;

(4) Forfeited distilled spirits (including alcohol), wine and malt beverages not fit for human consumption nor for medicinal, scientific, or mechanical purposes. (Domestic forfeited distilled spirits, wine, and malt beverages which were not produced at a registered distillery, winery, or brewery or which are

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in containers that have been opened or entered shall be regarded as not fit for human consumption. (See §101-48.302 for disposition.);

(5) Distilled spirits, wine, and malt beverages in any one seizure of less than 5 wine gallons (see §§101-48.201-5 and 101-48.302 for disposition);

(6) Effects of deserters from the Coast Guard or the military services, or of deceased persons of the Coast Guard or the military services, or of deceased inmates of naval or soldiers' homes or Government hospitals;

(7) Seeds, plants, or misbranded packages seized by the Department of Agriculture pursuant to authorities provided by law;

(8) Game and equipment (other than vessels, including cargo) seized by the Department of the Interior pursuant to authorities provided by law;

(9) Files of papers, all dead and undeliverable mail matter, and non-mailable matter in the custody of the Postmaster General;

(10) Infringing articles in the custody of the Patent Office, Department of Commerce;

(11) Unclaimed and abandoned personal property subject to applicable customs laws and regulations;

(12) Collection seizures to satisfy tax liens and property acquired by the United States in payment of or as security for debts arising under the internal revenue laws;

(13) Property, the vesting and disposition of which is controlled by the provisions of 38 U.S.C. 5201 (*et seq.*), Disposition of deceased veterans' personal property; and

(14) Motor vehicles which are 4 or more years old.

(d) The general rule for reporting specified in this §101-48.101-5 is modified with respect to the following:

(1) Controlled substances (as defined in §101-43.001-3), regardless of quantity, condition, or acquisition cost, shall be reported to the Drug Enforcement Administration, Department of Justice, Washington, DC 20537;

(2) Forfeited firearms not desired for retention by the seizing agency, except those covered by paragraphs (c) (1) and (2) of this section, shall be reported provided such firearms are in excellent serviceable condition and known to be

used for law enforcement or security purposes or are sufficiently unusual to be of interest to a Federal museum. Forfeited firearms not reportable in accordance with the foregoing criteria shall be destroyed and disposed of pursuant to §101-48.303;

(3) Property forfeited other than by court decree which is suitable for human consumption or which may be used in the preparation of food may be immediately transferred by the agency having custody to the nearest Federal agency known to be a user of such property, without specific authorization from GSA;

(4) Vessels of 1,500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use shall be reported to the Maritime Administration;

(5) Property seized by one Federal agency but adopted by another for prosecution under laws enforced by the adopting Federal agency shall be reported by the adopting agency to the extent and in the manner required by this subpart 101-48.1;

(6) Lost, abandoned, or unclaimed personal property controlled by the provisions of 10 U.S.C. 2575 shall be disposed of as provided by 10 U.S.C. 2575 and regulations issued thereunder by appropriate authority; and

(7) Drug paraphernalia seized and forfeited under the provisions of 21 U.S.C. 857, which is not retained for official use by the seizing agency or transferred to another Federal agency under seizing agency authorities, or such drug paraphernalia retained for official use but no longer required by the agency, shall be reported on Standard Form 120 to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

(e) Property not required to be reported pursuant to this §101-48.101-5 and not excepted or modified with respect to reporting pursuant to this §101-48.101-5 shall be handled as set forth in §101-43.305.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40260, Aug. 14, 1991]

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§ 101-48.101-6 Transfer to other Federal agencies.

(a) Normally, the transfer of forfeited or voluntarily abandoned personal property shall be accomplished by submitting for approval a Standard Form 122, Transfer Order Excess Personal Property (see § 101-43.4901-122), or any other transfer order form approved by GSA, to the General Services Administration (3FBP-W), Washington, DC 20407, for approval.

(b) Except for property which is subject to court action, the transfer order shall indicate the agency having custody of the property, the location of the property, the report or case number on which the property is listed, the property required, and the fair value, if applicable.

(c) Property subject to court action may be requested by submitting a transfer order or a letter setting forth the need for the property by the agency. If proceedings for the forfeiture of the property by court decree are being started or have begun, application will be made by GSA to the court, prior to entry of a decree, for an order requiring delivery of the property to an appropriate recipient for its official use.

(d) Transfers of forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages shall be limited to those for medicinal, scientific, or mechanical purposes or for any other official purposes for which appropriated funds may be expended by a government agency. Transfer orders shall be signed by the head of the requesting agency or a designee. Where officials are designed to sign, the General Services Administration (3FBP-W), Washington, DC 20407, shall be advised of designees by letter signed by the head of the agency concerned. No transfer order will be acted upon unless it is signed as provided herein.

(e) Transfer orders requesting the transfer of forfeited or voluntarily abandoned firearms shall set forth the need for the property by the requesting agency.

(f) Transfer orders requesting the transfer of reportable forfeited drug paraphernalia shall be submitted to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, for approval.

Transfers will not be approved unless the Standard Form 122 or other transfer document contains a certification that the paraphernalia will be used for law enforcement or educational purposes only.

(g) Any property transferred for official use under this subpart 101-48.1, with the exception of drug paraphernalia, shall thereupon lose its identity as forfeited or voluntarily abandoned property. When no longer required for official use, it shall be reported as excess in accordance with § 101-43.304. Drug paraphernalia shall not lose its identity as forfeited property. When no longer required for official use, it shall be reported in accordance with § 101-48.101-5(d)(7).

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40261, Aug. 14, 1991]

§ 101-48.101-7 Reimbursement and costs incident to transfer.

(a) Reimbursement upon transfer of personal property forfeited or voluntarily abandoned other than by court decree shall be in accordance with § 101-43.309-3.

(b) Reimbursement for judicially forfeited property shall be in accordance with provisions of the court decree.

(c) Commercial charges incurred at the time of and subsequent to forfeiture or voluntary abandonment but prior to transfer shall be borne by the transferee agency when billed by the commercial organization.

(d) The direct costs incurred by the holding agency prior to the transfer of forfeited or voluntarily abandoned property shall be borne by the transferee agency when billed by the holding agency. Overhead or administrative costs or charges shall not be included. Only costs set forth in 40 U.S.C. 304j, such as storage, packing, preparation for shipment, loading, and transportation shall be recovered by the holding agency.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40261, Aug. 14, 1991]

§ 101-48.101-8 Billing.

(a) Each holding agency shall be responsible for billing and collecting the costs of care and handling, as well as the fair value of property transferred

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to other agencies, when such reimbursement is required in accordance with §101-43.309-3.

(b) Commercial organizations accruing charges prior to transfer shall be responsible for billing and collecting these charges from the transferee agency.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40261, Aug. 14, 1991]

§ 101-48.101-9 Disposition of proceeds.

Where reimbursement for fair value is to be made in accordance with §101-43.309-3, the fair value proceeds shall be deposited in the Treasury to miscellaneous receipts or in the appropriate agency account by the transferor agency.

[56 FR 40261, Aug. 14, 1991]

§ 101-48.102 Abandoned or other unclaimed property.

§ 101-48.102-1 Vesting of title in the United States.

Abandoned or other unclaimed property, subject to the provisions of section 203(m) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)), shall remain in the custody of and be the responsibility of the agency finding such property. The property shall be held for a period of 30 days from the date of finding such property. Upon expiration of this 30-day period, title to such property vests in the United States, except that title reverts to the owner where a proper claim is filed by the owner prior to official use or transfer for official use and, if there is no official use or transfer for official use, prior to sale of the property.

§ 101-48.102-2 Reporting.

(a) Abandoned or other unclaimed property not utilized by the holding agency shall be reported and handled in the same manner as excess property under subpart 101-43.3, except as provided in §101-48.102-2(b).

(b) Abandoned for other unclaimed property which, by the provisions of §101-43.304, is not required to be reported and which is not otherwise

transferred pursuant to subpart 101-43.3, shall be subject to the provisions of subpart 101-48.3.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40261, Aug. 14, 1991]

§ 101-48.102-3 Reimbursement.

Reimbursement of fair market value, as determined by the head of the finding or transferor agency, shall be required in connection with official use by the finding agency or transfer for official use of abandoned or other unclaimed property. Fair market value as used herein does not mean fair value as determined under §101-43.309-3.

[56 FR 40261, Aug. 14, 1991]

§ 101-48.102-4 Proceeds.

Reimbursement for official use by the finding agency or transfer for official use of abandoned or other unclaimed property shall be deposited in a special fund by the finding or transferor agency for a period of at least 3 years. A former owner may be reimbursed from the special fund, based upon a proper claim made to the finding or transferor agency and filed within 3 years from the date of vesting of title in the United States. Such reimbursement shall not exceed fair market value at the time title was vested in the United States, less the costs incident to the care and handling of such property as determined by the head of the agency concerned.

Subpart 101-48.2—Donation of Abandoned and Forfeited Personal Property

§ 101-48.200 Scope of subpart.

This subpart 101-48.2 prescribes the policies and methods governing the donation by Federal agencies of abandoned and forfeited property in their custody or control in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Virgin Islands.

§ 101-48.201

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§ 101-48.201 Donation of forfeited distilled spirits, wine, and malt beverages.

§ 101-48.201-1 General.

Forfeited distilled spirits, wine, and malt beverages for which there is no Federal utilization shall be made available to appropriate eleemosynary institutions prior to other disposition.

§ 101-48.201-2 Establishment of eligibility.

Eleemosynary institutions desiring to obtain available distilled spirits, wine, and malt beverages shall submit GSA Form 18, Application of Eleemosynary Institution (see § 101-48.4902-18), to the General Services Administration (3FBP-W), Washington, DC 20407. The Office of Management and Budget Approval Number 3090-0001 has been assigned to this form.

[56 FR 40261, Aug. 14, 1991]

§ 101-48.201-3 Requests by institutions.

Eligible institutions desiring to obtain available distilled spirits, wine, and malt beverages shall show on the GSA Form 18, Application of Eleemosynary Institution, the kind and quantity desired. The GSA National Capital Region will inform the eligible institution when these alcoholic beverages become available, request confirmation that the institution's requirement is current, and inform the institution that shipment will be initiated upon this confirmation.

[56 FR 40261, Aug. 14, 1991]

§ 101-48.201-4 Filling requests.

The GSA National Capital Region will authorize the seizing agency to fill such requests as the region may determine proper to ensure equitable distribution among requesting institutions.

[56 FR 40262, Aug. 14, 1991]

§ 101-48.201-5 Donation of lots not required to be reported.

Forfeited distilled spirits, wine, and malt beverages not required to be reported under § 101-48.101-5 may be donated to eleemosynary institutions known to be eligible therefor if the

beverages are determined by the seizing agency to be suitable for human consumption. The holding agency shall promptly report these donations by letter to the General Services Administration (3FBP-W), Washington, DC 20407. This report shall state the quantity and type donated, the name and address of the donee institution, and date of the donation.

[56 FR 40262, Aug. 14, 1991]

§ 101-48.201-6 Packing and shipping costs.

The receiving institution shall pay all costs of packing, shipping, and transportation.

§ 101-48.202 Donation of forfeited drug paraphernalia.

(a) Forfeited drug paraphernalia for which there is no Federal utilization may be made available through State agencies, at the discretion of GSA, to State and local governments for law enforcement or educational purposes only. Donations will be made in accordance with part 101-44, except as otherwise provided in this subpart 101-48.2.

(b) All transfers of drug paraphernalia to the State agencies for donation to State and local governments shall be accomplished by use of SF 123, Transfer Order Surplus Personal Property (see § 101-44.4901-123). The SF 123 shall be accompanied by a letter of justification, signed and dated by the authorized representative of the proposed donee, setting forth a detailed plan of utilization for the property and certifying that the donee will comply with all Federal State, and local laws, regulations, ordinances, and requirements governing use of the property. The SF 123, with the letter of justification, shall be submitted for approval to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

(c) A State agency shall not pick up or store drug paraphernalia in its distribution centers. This property shall be released from the holding agency directly to the designated donee.

[56 FR 40262, Aug. 14, 1991]

Subpart 101-48.3—Disposal of Abandoned and Forfeited Personal Property

§ 101-48.300 Scope of subpart.

This subpart 101-48.3 prescribes the policies and methods governing the disposal of abandoned or other unclaimed, voluntarily abandoned, or forfeited personal property which may come into the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Virgin Islands. Property in this category located elsewhere shall be disposed of under the regulations of the agency having custody thereof.

§ 101-48.301 General.

Any property in the custody of a Federal agency which is not desired for retention by that agency nor utilized within any Federal agency in accordance with subpart 101-48.1 nor donated in accordance with subpart 101-48.2 shall be disposed of in accordance with the provisions of this subpart 101-48.3

§ 101-48.302 Distilled spirits, wine, and malt beverages.

(a) Distilled spirits, wine, and malt beverages (as defined in §101-48.001) which are not required to be reported under §101-48.101-5(c)(4) shall be destroyed as prescribed in §101-48.302(b); distilled spirits, wine, and malt beverages which are not required to be reported under §101-48.101-5(c)(5) and which have not been donated as prescribed in subpart 101-48.2 shall be destroyed in like manner.

(b) When reportable abandoned or forfeited distilled spirits, wine, and malt beverages are not retained by the holding agency, transferred to another agency, or donated to an eligible eleemosynary institution by GSA, the GSA National Capital Region will issue clearance to the agency which submitted the report as prescribed by §101-48.101-5 for destruction of the distilled spirits, wine, and malt beverages. A record of the destruction showing time, place, and nomenclature and quantities destroyed shall be filed with

papers and documents relating to the abandonment or forfeiture.

[42 FR 55813, Oct. 19, 1977, as amended at 56 FR 40262, Aug. 14, 1991]

§ 101-48.303 Firearms.

Abandoned or forfeited firearms or voluntarily abandoned firearms shall not be sold as firearms. They may be disposed of by sale as scrap in the manner prescribed in §101-45.309-4.

§ 101-48.304 Drug paraphernalia.

(a) When forfeited drug paraphernalia is neither utilized within any Federal agency in accordance with subpart 101-48.1 nor donated in accordance with subpart 101-48.2, GSA will issue clearance to the reporting agency to destroy the items. The destruction shall be performed by an employee of the holding agency in the presence of two additional employees of the agency as witnesses to the destruction. A statement of certification describing the fact, manner, date, type, and quantity destroyed shall be certified to by the agency employee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement which shall appear on the certification below the signature of the certifying employee:

“I have witnessed the destruction of the (list the drug paraphernalia) described in the foregoing certification in the manner and on the date stated herein:”

Witness _____ Date _____

Witness _____ Date _____

(b) The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency.

[56 FR 40262, Aug. 14, 1991]

§ 101-48.305 Property other than distilled spirits, wine, malt beverages, firearms, and drug paraphernalia.

(a) Property forfeited other than by court decree or voluntarily abandoned, except distilled spirits, wine, malt beverages, firearms, and drug paraphernalia, which is not returned to a claimant, retained by the agency of

§ 101-48.306

custody, or transferred in accordance with subpart 101-48.1 may be released to the holding agency by the GSA National Capital Region for public sale, except as otherwise provided by law.

(b) Abandoned or other unclaimed property which is not retained by the holding agency, not transferred to another agency, or not required to be reported by the provisions of §101-48.102, may be reported for sale to the appropriate selling activity at any time after title vests in the United States as provided in §101-48.102-1.

(c) Voluntarily abandoned, abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, normally shall be sold by competitive bid as prescribed in §101-45.304-1, subject to the same terms and conditions as would be applicable to the sale of surplus personal property. Voluntarily abandoned, abandoned, or other unclaimed property and forfeited property may be sold also by negotiation at the discretion of the selling agency but only under the circumstances set forth in §101-45.304-2. Such property shall be identified by the holding agency as abandoned or other unclaimed, voluntarily abandoned, or forfeited property, and shall be reported for sale to the appropriate GSA regional office or to such other agency as otherwise is responsible for selling its surplus personal property unless specifically required by law to be sold by the holding agency.

[56 FR 40262, Aug. 14, 1991]

§ 101-48.306 Disposition of proceeds from sale.

§ 101-48.306-1 Abandoned or other unclaimed property.

(a) Proceeds from sale of abandoned or other unclaimed property shall be deposited in a special fund by the finding agency for a period of 3 years. A former owner may be reimbursed for abandoned or other unclaimed property which had been disposed of in accordance with the provisions of this subpart 101-48.3 upon filing a proper claim with the finding agency within 3 years from the date of vesting of title in the United States. Such reimbursement shall not exceed the proceeds realized

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from the disposal of such property less disposal costs and costs of the care and handling of such property as determined by the head of the agency concerned.

(b) Records of abandoned or other unclaimed property shall be maintained in such a manner as to permit identification of the property with the original owner, if known, when such property is offered for sale. Records of proceeds received from the sale of abandoned or other unclaimed property shall be maintained as part of the permanent file and record of sale until the 3-year period for filing claims has elapsed.

[56 FR 40262, Aug. 14, 1991]

§ 101-48.306-2 Forfeited or voluntarily abandoned property.

Proceeds from sale of property which has been forfeited other than by court decree, by court decree, or which has been voluntarily abandoned, shall be deposited in the Treasury of the United States as miscellaneous receipts or in such other agency accounts as provided by law or regulations.

[56 FR 40262, Aug. 14, 1991]

Subparts 101-48.4—101-48.48 [Reserved]

Subpart 101-48.49—Illustrations of Forms

§ 101-48.4900 Scope of subpart.

This subpart illustrates forms prescribed for use in connection with subject matter covered in this part 101-48.

§ 101-48.4901 [Reserved]

§ 101-48.4902 GSA forms.

(a) GSA Form 18, Application of Eleemosynary Institution, is illustrated in this §101-48.4902 to show the text, format, and arrangement of the form and to provide a ready source of reference.

(b) Copies of the GSA Form 18 may be obtained from the General Services Administration (WDP), Washington, DC 20407.

[42 FR 55813, Oct. 19, 1977, as amended at 46 FR 39593, Aug. 4, 1981]

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§ 101-48.4902-18 GSA Form 18, Application of Eleemosynary Institution.

NOTE: The form illustrated at §101-48.4902-18 is filed with the original document.

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

SOURCE: 65 FR 45539, July 24, 2000, unless otherwise noted.

§ 101-49.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For information on utilization, donation, and disposal of foreign gifts and decorations previously contained in this part, see FMR part 42 (41 CFR part 102-42).

APPENDIX TO SUBCHAPTER H—TEMPORARY REGULATIONS

[EDITORIAL NOTE: The following is a list of temporary regulations, except delegations of authority, which relate to Federal property management and are in effect as of the revision date of this volume. The full text of these temporary regulations appears following this table.]

FPMR Temp. Reg.	Subject	Expires	FR Publication
H-29	Criteria for reporting excess personal property.	July 31, 2000	62 FR 2022, Jan. 15, 1997; 62 FR 68217, Dec. 31, 1997; 64 FR 1139, Jan. 8, 1999; 64 FR 72570, Dec. 28, 1999
H-30	Donation of Federal surplus personal property to non-profit providers of assistance to impoverished families and individuals.	Feb. 21, 2000	63 FR 8352, Feb. 19, 1998

FEDERAL PROPERTY MANAGEMENT REGULATIONS TEMPORARY REGULATION H-29

To: Heads of Federal agencies
 Subject: Criteria for reporting excess personal property

1. *Purpose.* This regulation establishes revised criteria for reporting excess personal property to GSA, reduces utilization screening time, raises the dollar threshold for direct transfers, and updates addresses associated with reporting excess personal property.

2. *Effective date.* This regulation is effective January 15, 1997.

3. *Expiration date.* This regulation expires January 15, 1998.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.*

a. Certain excess property is reportable to GSA by executive agencies for the purpose of maximizing opportunities for utilization. Property which is reported to GSA is afforded regional and nationwide visibility by inclusion in GSA's automated property disposal system—the Federal Disposal System (FEDS). Once an item is in the FEDS nationwide inventory of excess and surplus property, agencies can determine the availability of property by phoning the supporting GSA regional office, obtaining a copy of the FEDS inventory listing, or by accessing an electronic bulletin board within FEDS containing the nationwide inventory—Screen by

Computer and Request Excess by Electronic Notification (SCREEN)

b. GSA's major personal property management customers have requested relief from reporting requirements by reducing the number of items of excess property to be reported. GSA is granting these requests provided such reductions do not result in an appreciable decline in overall transfer volumes of excess personal property. GSA conducted a study to assess the potential impact of reduced reporting requirements. The analysis showed that over 70 percent of the dollar value of property transferred represented Federal supply classification (FSC) groups which would continue to be reported to GSA as excess under the new reporting requirements.

c. Changes to the reporting criteria will be reexamined after an implementation period of 1 year to determine their net effect on overall business volumes. A significant decline in the utilization rate (dollar value of property transfers divided by dollar value of property generations) would be sufficient justification for modifying or rescinding the regulation.

d. GSA provided approval to the Department of Defense on July 20, 1994, to implement throughout its nationwide network of Defense Reutilization and Marketing Offices (DRMO's) a streamlined disposal concept known as single cycle processing. Under this concept, utilization screening time of excess

property reported to GSA is reduced from 60 to 21 calendar days. Federal respondents to a follow-up customer survey indicated that 21 calendar days is sufficient time for screening Department of Defense excess property. A study group consisting of GSA and Federal and State representatives recommended that reduced screening time also be applied to civilian agency excess property.

6. *Definitions.* For purposes of this regulation, the following definitions apply:

a. "Reportable property" means personal property that is required to be reported to GSA in accordance with FPMR 101-43.304 prior to disposal.

b. "Nonreportable property" means any personal property that does not meet the reporting criteria set forth in FPMR 101-43.304, and therefore is not required to be reported formally to GSA, but which is available locally for Federal transfer or donation.

7. *Explanation of changes.*

a. Section 101-42.205 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 101-42.205 Exceptions to reporting.

(a) * * *

(b) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item shall not be reported.

b. Section 101-42.402 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 101-42.402 Reporting hazardous materials for sale.

* * * * *

(a) *Reportable property.* Personal property which is reportable property and is identified as hazardous must be reported to a GSA regional office for utilization screening in accordance with §101-42.204. If, after reporting to GSA, the hazardous materials are not transferred or donated, in accordance with subparts 101-42.2 through 101-42.3 and 101-42.11, the hazardous materials will be programmed for sale by GSA, unless advised otherwise by the holding agency in accordance with part 101-45, without further documentation from the holding agency.

(b) *Nonreportable property.* Under §101-42.202, holding agencies are required to identify and label hazardous materials. Listings of personal property which is nonreportable property and is identified as hazardous must be made available to GSA area utilization officers for local utilization and donation screening in accordance with §101-42.204 and §101-42.205. If property has not been reported and is to be sold by GSA, it must be reported

to GSA for sale on Standard Form 126, Report of Personal Property for Sale, or by automated means which GSA is capable of accepting.

(c) *Certification and Description.* The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in §101-42.202(e) and 101-42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such description shall be furnished by providing:

(1) An MSDS or copy thereof; or

(2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or

(3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

(d) Property not subject to GSA screening. Hazardous material which may not be reported to GSA in accordance with §101-42.204 and §101-42.205 shall not be reported to GSA for sale unless GSA agrees to conduct such sale.

c. Section 101-43.001-30 is revised to read as follows:

§ 101-43.001-30 Screening period.

Screening period means:

(a) For reportable personal property of a civilian agency, the screening period is normally a period of 21 calendar days from the day following receipt of the automated report in FEDS or receipt of the manually completed report in the appropriate GSA office to and including the day specified as the surplus release date. For reportable property that is reported by a military activity during a period of property accumulation prior to a period of formal utilization screening, the screening period normally extends from the date of reporting to a period of 21 calendar days from the day following the date of the end of the accumulation.

(b) For civilian nonreportable property, the screening period is normally a period of 21 calendar days from the day the property is made available by the holding agency for screening as excess. For military nonreportable property that undergoes a period of accumulation prior to a period of utilization screening, the screening period is normally the same as for reportable property.

d. Section 101-43.001-34 is added to read as follows:

§ 101-43.001-34 Unit cost.

Unit cost means the original acquisition cost of a single item of property.

e. Section 101-43.302 is amended by revising paragraph (c) to read as follows:

§ 101-43.302 Agency responsibility.

* * * * *

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(c) GSA will assist agencies in meeting their requirements for nonreportable property. Federal agencies requiring such property should contact the appropriate GSA regional office indicated in §101-43.4802. GSA area utilization officers, stationed at key excess generating points throughout the United States, screen and offer nonreportable property as it becomes available for transfer.

* * * * *

f. Section 101-43.304-1 is amended by revising paragraph (a) to read as follows:

§ 101-43.304-1 Reporting.

(a) Reportable property enumerated by the Federal supply classification (FSC) groups and classes, acquisition cost, and condition codes in §101-43.4801 shall be reported promptly to GSA with descriptions in sufficient detail to permit transfer or sale without further reference to the holding agency. In the absence of these descriptions, adequate commercial descriptions shall be substituted. Exceptions to these reporting requirements are covered in §101-43.305. Whenever possible, the national stock number (NSN) shall be provided as part of the description. It is essential that the excess personal property report reflect the true condition of the property as of the date it is reported excess through assignment of the appropriate disposal condition code designation as defined in §101-43.4801(e). Each Department of Defense excess personal property report must also contain the appropriate supply condition code as defined in §101-43.4801(f), including reports of contractor inventory so far as practicable. When available from property records, civilian agencies shall also include the appropriate supply condition code in excess personal property reports. To expedite processing, reports may be submitted up to 60 calendar days prior to the actual date of property availability, provided that the report clearly indicates this pending status and reflects the date on which the property will be determined excess.

* * * * *

g. Section 101-43.304-2 is amended by revising paragraph (b) to read as follows:

§ 101-43.304-2 Form and distribution of reports.

* * * * *

(b) The SF 120 and SF 120A shall be submitted in an original and three copies. Reporting by ADP media shall be as specified and approved by GSA. Reports shall be directed to the GSA regional office for the region in which the property is located (see

§101-43.4802). However, reports of fixed-wing and rotary-wing aircraft shall be submitted to the General Services Administration (9FB), San Francisco, CA 94102.

h. Section 101-43.304-4 is revised to read as follows:

§ 101-43.304-4 Property at installations due to be discontinued.

Executive agencies that have installations which are due to be discontinued, closed, or abandoned and at which there will be excess personal property shall, unless inadvisable in the interest of national security, give advance notice of such situations as early as possible by letter to the appropriate GSA regional office. In such cases, agencies shall identify the installations to be discontinued, provide the scheduled date for the removal of personnel from the location, and specify the last date when the personal property will be needed. As soon as possible after filing the advance notice, the excess personal property shall be reported in accordance with §101-43.304-1 to provide time for screening for Federal utilization and donation purposes, within forty-two calendar days when possible.

i. Section 101-43.305 is revised to read as follows:

§ 101-43.305 Nonreportable property and property not subject to GSA screening.

(a) Nonreportable property must be locally screened only, and it need not be reported to GSA for nationwide utilization screening. Such property is a valuable source of supply for Federal agencies; therefore, GSA regional offices and GSA area utilization officers are responsible for local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to nonreportable property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card.

(b) A listing of nonreportable property, providing the extended value in acquisition cost dollars of each line item and the total number of line items on the listing, must be made available to GSA area utilization officers for local utilization and donation screening. Agencies that have computer records of their excess/surplus personal property are encouraged to report nonreportable property electronically, in lieu of submitting hardcopy listings. Agencies that are not able to report nonreportable property electronically, and have nonreportable property which is to be sold by GSA if it survives utilization and donation screening, are encouraged to report that property on a Standard Form (SF) 120, in lieu of an excess listing, to eliminate the need to submit SF 126, Report

of Personal Property for Sale, after the completion of donation screening.

(c) In accordance with paragraph (d) of this section, certain kinds of property are not covered by the GSA utilization screening process. Such property is neither reportable property nor nonreportable property. It is the responsibility of the owning agency to screen such property and make reasonable efforts to obtain utilization among other Federal agencies. Although not required to do so, GSA may assist in the screening and transfer of such property when requested to do so by the owning agency or when otherwise directed by GSA.

(d) Unless otherwise directed by GSA, the following general categories of excess personal property are excepted from the GSA utilization screening process and shall not be reported to GSA for nationwide circularization nor made available to GSA area utilization officers for local screening:

- (1) Perishables, defined for the purposes of this section as any foodstuffs which are subject to spoilage or decay;
- (2) Property dangerous to public health and safety;
- (3) Scrap, except aircraft in scrap condition, provided the property strictly conforms to the definitions for scrap found at §101-43.001-29;
- (4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;
- (5) Controlled substances in which case solicitation shall be limited to those agencies authorized for transfer under §101-42.1102-3 provisions;
- (6) Reportable property which, prior to reporting as required in §101-43.304, is transferred directly between Federal agencies as provided in §101-43.309-5(a) or by prearrangement with GSA to fill a known need;
- (7) Trading stamps and bonus goods (see §101-25.103-4);
- (8) Nonappropriated fund property;
- (9) Nuclear Regulatory Commission-controlled materials (see §101-42.1102-4 and 10 CFR parts 30 through 35, 40, and 70.); and
- (10) Hazardous waste and items determined by the holding agency to be extremely hazardous (see §101-42.402).

§ 101-43.307-7 [Amended]

j. Section 101-43.307-7 is amended by removing paragraph (a) and redesignating paragraph (b) as new paragraph (a) and paragraph (c) as new paragraph (b).

k. Section 101-43.307-12 is amended by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 101-43.307-12 Shelf-life items.

* * * * *

(c) Reportable shelf-life items which have a remaining useful life of 6 weeks or more be-

fore reaching the expiration date shall be reported as excess in accordance with §101-43.304. Agencies may, at their option, also report shelf-life items which are nonreportable property. The report shall identify the items in the description as shelf-life items by carrying the designation symbol "SL" and by showing the expiration date. If the item has an extendable-type expiration date, there shall also be furnished an indication as to whether the expiration date is the original or an extended date.

(d) Normally, items reported in accordance with paragraph (c) of this section, including medical shelf-life items held for national emergency purposes, will be given a surplus release date effective 21 calendar days from the date following the day the property was reported. This date may be shortened or extended according to utilization objectives and the remaining useful shelf life. However, GSA offices will screen shelf life items for both reportable property and nonreportable property to permit their use before the shelf life expires and the items are unfit for human use.

(e) Nonreportable shelf-life items which have a remaining useful life of 6 weeks or more before reaching the expiration date shall be made available for use by other Federal agencies as provided in §101-43.305. Agency documents listing such items shall show the expiration date and, in the case of items with an extendable expiration date, shall indicate whether the expiration date is the original or an extended date. When such items are determined excess, a surplus release date shall be established by the holding agency providing a minimum of 21 calendar days for utilization screening, unless determined otherwise by GSA. With the approval of GSA, the surplus release date may be extended by the holding agency when the items are selected by an authorized screener for transfer or are set aside by a GSA representative for potential or actual transfer. For controlled substances (as defined in §101-42.001), each executive agency shall comply with §101-42.1102-3.

(f) Shelf-life items which have a remaining useful life of less than 6 weeks, regardless of classification as reportable property or nonreportable property, shall be made available for utilization by other Federal agencies in the manner provided in paragraph (e) of this section.

* * * * *

l. Section 101-43.307-13 is revised to read as follows:

§ 101-43.307-13 Medical shelf-life items held for national emergency purposes.

(a) Whenever the head of an executive agency determines that the remaining storage or shelf-life of medical materials or supplies held for national emergency purposes is

of too short duration to justify their continued retention for such purposes and that their transfer or disposal would be in the best interest of the United States, those materials or supplies shall be considered to be nonreportable property unless otherwise directed by GSA. To the greatest extent practicable, the above determination shall be made at such time as to ensure that such medical materials or supplies can be transferred or otherwise disposed of in sufficient time to permit their use before their shelf-life expires and the items are unfit for human use.

(b) Excess medical shelf-life items regardless of the remaining useful life shall be made available for use by other Federal agencies as provided in §101-43.305. Each agency may also report excess medical shelf-life items to enhance the possibility of utilization through increased circularization. The excess report shall identify items as medical shelf-life items held for national emergency purposes by carrying the designating symbol "MSL" in the description of the report and by showing the shelf-life expiration date. Information shall also be furnished regarding whether the expiration date is the original or the extended date. Further, whenever medical shelf-life items held for national emergency purposes are reported as excess, any specialized storage requirements pertaining to the items listed thereon shall be noted on the report.

(c) When such items are determined excess, a surplus release date shall be established by the holding agency in accordance with §101-43.311-2. For controlled substances (as defined in §101-42.001), each executive agency shall comply with §101-42.1102-3.

(d) Transfers among Federal agencies of medical materials and supplies held for national emergency purposes and determined to be excess shall be accomplished in accordance with §101-43.309, except that such transfers shall be made upon such terms and prices as shall be agreed to by the Federal agencies concerned. Proceeds from such transfers may be credited to the current applicable appropriation or fund of the transferring agency and shall be available only for the purchase of medical materials or supplies for national emergency purposes.

m. Section 101-43.309-2 is amended by revising paragraphs (b) and (d) to read as follows:
§ 101-43.309-2 Information on availability.

* * * * *

(b) Review of an electronic bulletin board called FEDS/SCREEN (Federal Disposal System/Screen by Computer and Request Excess by Electronic Notification) which contains

information on GSA's nationwide inventory of excess and surplus property;

* * * * *

(d) Submission of current and future requirements for excess personal property to the appropriate GSA regional office using GSA Form 1539, Request for Excess Personal Property, illustrated at §101-43.4902-1539. Instructions for submission of requirements may be obtained from any GSA regional office. Wherever possible, the NSN should be included for each item requested. GSA will assist agencies in obtaining NSN's to the extent practicable. If substitute items are acceptable, these should also be identified by NSN. Requirements for NSN items may be submitted electronically. If not currently available as excess, property requirements identified by NSN's will be retained for approximately 180 calendar days. Property reported excess during this time, if matched with recorded requirements, will be offered for immediate transfer. Agencies should update their lists of items at the end of each 180-calendar-day period to retain visibility in the requirements bank.

n. Section 101-43.309-5 is amended by revising paragraph (a) to read as follows:

§ 101-43.309-5 Procedure for effecting transfers.

(a) All transfers of excess personal property between Federal agencies shall be by SF 122, Transfer Order Excess Personal Property (see §101-43.4901-122), or any other transfer order form approved by GSA. Automated requests on approved forms and automated requests generated by FEDS/SCREEN may be used for excess personal property transfers. However, Federal agencies using automated requests shall ensure that document numbers are controlled and records maintained indicating the official authorized to approve property transfers. Except for automated transfer orders generated by FEDS/SCREEN, each transferee agency shall forward the original and three copies of the transfer order to the appropriate GSA regional office (see §101-43.4802) for approval. A SF 120 is not required in addition to SF 122 for direct transfers. Prior approval by GSA is not required when the appropriate GSA regional office is furnished an information copy of each direct transfer order by the transferor agency within 10 workdays from receipt of the order, and the property involved in the given transaction is:

- (1) Reportable property under §101-43.304 but has not yet been reported to GSA, the total acquisition cost of the transfer order does not exceed \$10,000, and the owning agency's regulations relative to internal distribution have been satisfied; or

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(2) Nonreportable property under §101-43.305 and has not been reserved at the holding location for special screening by the appropriate GSA regional office, and the total acquisition cost of the transfer order does not exceed \$50,000.

* * * * *

o. Section 101-43.311-1 is revised to read as follows:

§101-43.311-1 Reportable property.

(a) Excess personal property, which is reported to GSA in accordance with §101-43.304 and not transferred to other Federal agencies shall become surplus at the close of business on the surplus release date, which is indicated on the report of excess personal property to GSA. With the exception of aircraft and vessels, the surplus release date will normally be 21 calendar days from the day after GSA receives the report of the excess personal property. The surplus release date for aircraft, and for vessels 1,500 gross tons and under in FSC Group 19, will be 60 calendar days from the day after GSA receives the report of excess in the appropriate GSA regional office.

(b) GSA may expedite screening by shortening the period of utilization screening for items individually or by FSC class which have a history of little demand. GSA may extend the screening period to adequately screen large generations or specialized items. The appropriate GSA regional office will coordinate surplus release date changes with the reporting activity to minimize impact on the utilization and disposal process. Agencies may not shorten or lengthen screening periods on their own.

p. Section 101-43.311-2 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

§101-43.311-2 Nonreportable property.

(a) Nonreportable property shall become surplus when it has been made available by the holding agency for Federal use for a minimum of 21 calendar days from the date made available for screening to Federal agencies, unless determined otherwise by GSA, and has not been selected for transfer by another Federal agency. Holding agencies shall annotate property records with the date of the agency excess determination. Authorized Federal agency representatives may request and, with the approval of GSA, holding agencies will grant additional screening time not to exceed 30 calendar days, unless otherwise agreed upon by the holding agency and the GSA regional office concerned. GSA may shorten or lengthen the screening time.

* * * * *

q. Section 101-43.314 is amended by revising paragraph (b)(2)(iv) to read as follows:

§101-43.314 Use of excess personal property on grants.

* * * * *

(b) * * *

(2) * * *

(iv) Excess scientific equipment transferred pursuant to section 11(e) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will consider items of personal property as scientific equipment for transfer without reimbursement to the National Science Foundation (NSF) for use by a project grantee when the property requested is within FSC groups 12 (Fire Control Equipment), 14 (Guided Missiles), 43 (Pumps and Compressors), 48 (Valves), 58 (Communication, Detection, and Coherent Radiation Equipment), 59 (Electrical and Electronic Equipment Components), 65 (Medical, Dental, and Veterinary Equipment and Supplies), 66 (Instruments and Laboratory Equipment), 67 (Photographic Equipment), 68 (Chemicals and Chemical Products), or 70 (General Purpose Information Processing Equipment (Including Firmware), Software, Supplies, and Support Equipment). GSA will give consideration to transfer without reimbursement of items of excess property in other FSC groups when NSF certifies the item requested is a component of or related to a piece of scientific equipment or is an otherwise difficult-to-acquire item needed for scientific research. Items of property determined by GSA to be common use or general purpose property, regardless of classification, shall not be transferred to NSF for use by a project grantee without reimbursement.

* * * * *

r. Section 101-43.4801 is amended by revising paragraphs (a) through (d) to read as follows:

§101-43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal Supply Classification (FSC) groups and classes comprising reportable property. Property in these groups and classes must be reported to GSA when the following condition code and dollar threshold criteria are met:

(1) With the exception of aircraft, the condition code as defined in paragraph (e) of this section is salvage or better. Fixed-wing and rotary-wing aircraft, airframe structural components, and aircraft engines, as specified in paragraph (b) of this section, are reportable regardless of condition in accordance with §101-43.304-2.

(2) The unit cost, measured in acquisition dollars, is \$5,000 or more.

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(b) With respect to aircraft and aircraft components and accessories:

(1) As indicated in the table in paragraph (d) of this section, line items in FSC classes 1510, 1520, 1560, 2810, 2840, or any class in FSC group 16 shall be reported. In agencies other than the Department of Defense, all line items in these classes shall be reported regardless of condition code when dollar criteria are met. For the Department of Defense, aircraft in FSC class 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC class 1520, and line items in other classes which are components of these aircraft shall

be reported regardless of condition code when dollar criteria are met.

(2) Items in FSC classes 1510 and 1520 held by the Department of Defense or other agencies shall be reported to the General Services Administration (9FB), San Francisco, California 94102.

(c) All excess Government-owned information technology (IT) equipment and software, as defined in subpart 101-43.6, shall be disposed of in accordance with the provisions of that subpart.

(d) The following table shows FSC groups and classes which comprise reportable property:

FSC group	FSC class	Noun name
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe, structural components.
16	All	Aircraft components and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels over 1500 gross tons).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline, reciprocating engines, except aircraft.
	2810	Gasoline, reciprocating engines, aircraft.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery.
35	All	Service and trade equipment.
36	All	Special industry machinery (all but 3690 Specialized ammunition and ordinance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.
	4920	Aircraft maintenance and repair shop specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance, and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire and power and distribution equipment.
66	All	Instruments and laboratory equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

* * * * *

§ 101-43.4802 Regional office addresses and assigned areas.

s. Section 101-43.4802 is revised to read as follows:

Region and office address	Regional areas
National Capital Region, 470 L'Enfant Plaza East, SW., Suite 8100, Washington, DC 20407.	District of Columbia, Maryland (Prince Georges and Montgomery Counties only). Virginia (Prince William, Loudoun, Fairfax and Arlington Counties, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park only).
1—General Services Administration, O'Neill Federal Office Building, Massachusetts, 10 Causeway Street, Boston, MA 02222.	Connecticut, Maine, New Hampshire, Rhode Island, Vermont.
2—General Services Administration, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Commonwealth of Puerto Rico, Virgin Islands.

Region and office address	Regional areas
3—General Services Administration, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia.
4—General Services Administration, 410 West Peachtree Street, Atlanta, GA 30365.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
5—General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
6—General Services Administration, 4400 College Blvd., Suite 175, Overland Park, KS 66211.	Iowa, Kansas, Missouri, Nebraska.
7—General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
8—General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
9—General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102.	Arizona, California, Hawaii, Nevada, Pacific Ocean Areas.
10—General Services Administration, 400 15th Street, SW., Auburn, WA 98001.	Alaska, Idaho, Oregon, Washington.

t. Section 101-44.109 is amended by revising paragraphs (a) and (b) to read as follows:
§ 101-44.109 Donation screening period.

(a) Unless otherwise directed by GSA, 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 a Standard Form 123, with an informational copy to the holding activity, is submitted to a GSA regional office for approval within the donation screening period. Nonreportable 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 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, Standard Forms 123 will be processed by GSA regional offices in the following sequence:

(1) Department of Defense personal property which is reportable surplus will be reserved for public airport donation during the first 5 calendar days of the donation screening period and for service educational activities (SEA's) during the next 5 calendar days. During the remaining portion of the donation screening period, the property will be available on an equal basis to all applicants.

(2) Executive agency personal property, other than personal property of the Department of Defense, which is reportable surplus 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 an equal basis to all applicants. This property is not available for donation to SEA's.

(3) All executive agency personal property which is nonreportable surplus will be made

available for donation on an equal basis to all applicants. SEAs are not eligible for donation of nonreportable surplus of executive agencies other than the Department of Defense.

* * * * *

u. Section 101-45.303 is amended by revising paragraphs (a) and (b) to read as follows:
§ 101-45.303 Reporting property for sale.

* * * * *

(a) Reportable surplus. Reportable surplus, if not donated, will be programmed for sale by the GSA regional office unless the holding agency indicates on their reports of excess personal property that they elect to sell their own property.

(b) Nonreportable surplus. Nonreportable surplus, if not donated, shall be reported to the appropriate GSA regional office on Standard Form 126, Report of Personal Property for Sale (illustrated at § 101-45.4901-126) if GSA is to sell the property. Standard Form 126A, Report of Personal Property for Sale (Continuation Sheet), shall be added if additional pages are required. Standard Forms 126 and 126A are stocked as five-part carbon interleaved forms and may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

8. *Effect on other directives.* This regulation modifies portions of regulations appearing at parts 101-42 through 101-45 that pertain to the reporting and screening process for property determined to be excess to an agency's needs.

Dated: September 5, 1996

David J. Barram,
Acting Administrator of General Services

Federal Property Management Regulations

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General Services Administration

Washington, DC 20405

FEDERAL PROPERTY MANAGEMENT
REGULATIONS, TEMPORARY REGULATION H-30

To: Heads of Federal agencies

Subject: Donation of Federal surplus personal
property to nonprofit providers of assistance
to impoverished families and individuals

1. Purpose. This regulation expands eligi-
bility for the Federal surplus personal prop-
erty donation program to include nonprofit
organizations that provide food, clothing,
housing, or other assistance to families or
individuals with incomes below the poverty
line.

2. Effective date. This regulation is effective
upon publication in the FEDERAL REGISTER.

3. Expiration date. This regulation expires 2
years from the effective date. Prior to the
expiration date, this regulation will be codi-
fied in a new regulation named the Federal
Property and Administrative Services Regu-
lation (FPASR). The FPASR will replace the
Federal Property Management Regulations
and appear in 41 CFR Chapter 102.

4. Applicability. The provisions of this regu-
lation apply to all State agencies as defined
in FPMR 101-44.001-14. Such agencies must
follow this regulation and other guidelines in
FPMR 101-44.207 when determining an appli-
cant's eligibility as a nonprofit provider.

5. Background. Section 1 of Public Law 105-
50, signed by the President on October 6, 1997,
amended section 203(j)(3)(B) of the Federal
Property and Administrative Services Act of
1949, as amended, to add nonprofit organiza-
tions that provide assistance to the impover-
ished to the list of organizations eligible to
acquire surplus personal property for edu-
cational or public health purposes. Legisla-
tive history indicates the intent of this sec-
tion was to provide surplus property eligi-
bility to charitable organizations such as
food banks, Habitat for Humanity, and the
Salvation Army. See 143 Cong. Rec. H1941
(daily ed. April 29, 1997) (statement of Rep.
Horn). These groups provide goods and ser-
vices that contribute to the educational
growth or general health and well-being of
individuals and families below the poverty
line. FPMR 101-44.207 is amended to make
such providers eligible for Federal surplus
personal property donations.

6. Explanation of changes. Section 101-44.207
is amended by adding paragraph (a)(18.2) and
revising paragraph (c) to read as follows:

§ 101-44.207 Eligibility.

* * * * *

(a) * * *

(18.2) Provider of assistance to impoverished
families and individuals means a public or pri-
vate, nonprofit tax-exempt organization

whose primary function is to provide money,
goods, or services to families or individuals
whose annual incomes are below the poverty
line (as defined in section 673 of the Commu-
nity Services Block Grant Act) (42 U.S.C.
9902). Providers include food banks, self-help
housing groups, and organizations providing
services such as the following: Health care;
medical transportation; scholarships and tui-
tion assistance; tutoring and literacy in-
struction; job training and placement; em-
ployment counseling; child care assistance;
meals or other nutritional support; clothing
distribution; home construction or repairs;
utility or rental assistance; and legal coun-
sel.

* * * * *

(c) Eligibility of nonprofit tax-exempt activi-
ties. Surplus personal property may be do-
nated through the State agency to nonprofit
tax-exempt activities, as defined in this sec-
tion, within the State, such as:

- (1) Medical institutions;
(2) Hospitals;
(3) Clinics;
(4) Health centers;
(5) Providers of assistance to homeless in-
dividuals;
(6) Providers of assistance to impoverished
families and individuals;
(7) Schools;
(8) Colleges;
(9) Universities;
(10) Schools for the mentally retarded;
(11) Schools for the physically handi-
capped;
(12) Child care centers;
(13) Radio and television stations licensed
by the Federal Communications Commission
as educational radio or educational tele-
vision stations;
(14) Museums attended by the public;
(15) Libraries, serving free all residents of
a community, district, State or region; or
(16) Organizations or institutions that re-
ceive 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 Oppor-
tunity Act of 1964 and the Community Ser-
vices Block Grant Act. Programs for older in-
dividuals include services that are necessary
for the general welfare of older individuals,
such as social services, transportation ser-
vices, nutrition services, legal services, and
multipurpose senior centers.

7. Effect on other directives. This regulation
modifies the regulations appearing in para-
graphs (a) and (c) of FPMR 101-44.207.

Dated: February 5, 1998

Thurman M. Davis, Sr.,
Acting Administrator of General Services