

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER A—GENERAL

<i>Part</i>		<i>Page</i>
102-1	General [Reserved]	
102-2	Federal management regulation system	7
102-3	Federal Advisory Committee Management	11
102-4	Nondiscrimination in Federal financial assistance programs [Reserved]	
102-5	Home-to-work transportation	40
102-6—102-30	[Reserved]	

SUBCHAPTER B—PERSONAL PROPERTY

102-31	General [Reserved]	
102-32	Management of personal property [Reserved]	
102-33	Management of aircraft [Reserved]	
102-34	Motor vehicle management	45
102-35	Disposition of personal property [Reserved]	
102-36	Disposition of excess personal property	60
102-37	Donation of Surplus Personal Property	83
102-38	[Reserved]	
102-39	Replacement of personal property pursuant to the exchange/sale authority	115
102-40—102-41	[Reserved]	
102-42	Utilization, donation, and disposal of foreign gifts and decorations	119
102-43—102-70	[Reserved]	

SUBCHAPTER C—REAL PROPERTY

102-71	General	127
102-72	Delegation of authority	128
102-73	Real estate acquisition	131
102-74	Facility management	135
102-75	Real property disposal	137
102-76	Design and construction	141
102-77	Art-in-architecture	142
102-78	Historic preservation	143

41 CFR Ch. 102 (7–1–02 Edition)

<i>Part</i>		<i>Page</i>
102–79	Assignment and utilization of space	145
102–80	Safety and environmental management	148
102–81	Security	151
102–79	Assignment and utilization of space	145
102–80	Safety and environmental management	148
102–81	Security	151
102–82	Utility services	152
102–83	Centralized services in Federal buildings and complexes [Reserved]	
102–84	Annual real property inventories	152
102–85	Pricing policy for occupancy in GSA space	155
102–86—102–92	[Reserved]	
102–96—102–115	[Reserved]	

SUBCHAPTER D—TRANSPORTATION

102–116	General [Reserved]	
102–117	Transportation management	170
102–118	Transportation payment and audit	185
102–119—102–140	[Reserved]	

SUBCHAPTER E—TRAVEL MANAGEMENT

102–141	General [Reserved]	
102–142—102–170	[Reserved]	

SUBCHAPTER F—TELECOMMUNICATIONS

102–171	General [Reserved]	
102–172	Telecommunications management policy [Reserved]	
102–173—102–190	[Reserved]	

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

102–191	General [Reserved]	
102–192	Mail management	212
102–193	Creation, maintenance, and use of records	221
102–194	Standard and optional forms management program	223
102–195	Interagency reports management program	225
102–196	Federal facility ridesharing [Reserved]	
102–197—102–220	[Reserved]	

SUBCHAPTER H—SUBCHAPTER Z [RESERVED]

SUBCHAPTER A—GENERAL

PART 102—GENERAL [RESERVED]

PART 102-2—FEDERAL MANAGEMENT REGULATION SYSTEM

Subpart A—Regulation System

GENERAL

Sec.

- 102-2.5 What is the Federal Management Regulation (FMR)?
- 102-2.10 What is the FMR's purpose?
- 102-2.15 What is the authority for the FMR system?
- 102-2.20 Which agencies are subject to the FMR?
- 102-2.25 When are other agencies involved in developing the FMR?
- 102-2.30 Where and in what formats is the FMR published?
- 102-2.35 How is the FMR distributed?
- 102-2.40 May an agency issue implementing and supplementing regulations for the FMR?

NUMBERING

- 102-2.45 How is the FMR numbered?
- 102-2.50 How do I number my agency's implementing regulations?
- 102-2.55 How do I number my agency's supplementing regulations?

DEVIATIONS

- 102-2.60 What is a deviation from the FMR?
- 102-2.65 When may agencies deviate from the FMR?
- 102-2.70 What are individual and class deviations?
- 102-2.75 What timeframes apply to deviations?
- 102-2.80 What steps must an agency take to deviate from the FMR?
- 102-2.85 What are the reasons for writing to GSA about FMR deviations?
- 102-2.90 Where should my agency send its correspondence on an FMR deviation?
- 102-2.95 What information must agencies include in their deviation letters to GSA?
- 102-2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?
- 102-2.105 What information must agencies include in their follow-up analysis?
- 102-2.110 When must agencies provide their follow-up analysis?

NON-REGULATORY MATERIAL

- 102-2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

102-2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?

102-2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

Subpart B—Forms

102-2.130 Where are FMR forms prescribed?

102-2.135 How do agencies obtain forms prescribed by the FMR?

Subpart C—Plain Language Regulatory Style

102-2.140 What elements of plain language appear in the FMR?

102-2.145 To what do pronouns refer when used in the FMR?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 39085, July 21, 1999, unless otherwise noted.

Subpart A—Regulation System

GENERAL

§ 102-2.5 What is the Federal Management Regulation (FMR)?

The Federal Management Regulation (FMR) is the successor regulation to the Federal Property Management Regulations (FPMR). It contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that described how to do business with the General Services Administration (GSA). “How to” materials on this and other subjects are available in customer service guides, handbooks, brochures and Internet websites provided by GSA. (See § 102-2.125.)

§ 102-2.10 What is the FMR's purpose?

The FMR prescribes policies concerning property management and related administrative activities. GSA issues the FMR to carry out the Administrator of General Services' functional responsibilities, as established by statutes, Executive orders, Presidential memoranda, Circulars and bulletins issued by the Office of Management and Budget (OMB), and other policy directives.

§ 102-2.15

§ 102-2.15 What is the authority for the FMR system?

The Administrator of General Services prescribes and issues the FMR under the authority of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 486(c), as well as other applicable Federal laws and authorities.

§ 102-2.20 Which agencies are subject to the FMR?

The FMR applies to executive agencies unless otherwise extended to Federal agencies in various parts of this chapter. The difference between the two terms is that Federal agencies include executive agencies plus establishments in the legislative or judicial branch of the Government. See paragraphs (a) and (b) of this section for the definitions of each term.

(a) *What is an executive agency?* An executive agency is any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation. (See 40 U.S.C. 472(a).)

(b) *What is a Federal agency?* A Federal agency is 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 that person's direction). (See 40 U.S.C. 472(b).)

§ 102-2.25 When are other agencies involved in developing the FMR?

Normally, GSA will ask agencies to collaborate in developing parts of the FMR.

§ 102-2.30 Where and in what formats is the FMR published?

Proposed rules are published in the FEDERAL REGISTER. FMR bulletins are published in looseleaf format. FMR interim and final rules are published in the following formats—

41 CFR Ch. 102 (7-1-02 Edition)

(a) FEDERAL REGISTER under the “Rules and Regulations” section.

(b) Loose-leaf. (See § 102-2.35.)

(c) Code of Federal Regulations (CFR), which is an annual codification of the general and permanent rules published in the FEDERAL REGISTER. The CFR is available on line and in a bound-volume format.

(d) Electronically on the Internet.

§ 102-2.35 How is the FMR distributed?

(a) A liaison appointed by each agency provides GSA with their agency's distribution requirements of the loose-leaf version of the FMR. Agencies must submit GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances, to—General Services Administration, Office of Communications (X), 1800 F Street, NW, Washington, DC 20405.

(b) Order FEDERAL REGISTER and Code of Federal Regulations copies of FMR material through your agency's authorizing officer.

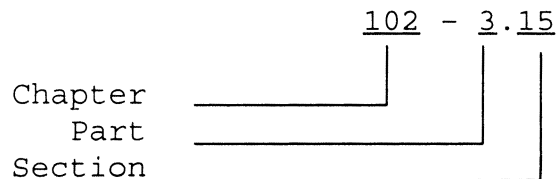
§ 102-2.40 May an agency issue implementing and supplementing regulations for the FMR?

Yes, an agency may issue implementing regulations (see § 102-2.50) to expand upon related FMR material and supplementing regulations (see § 102-2.55) to address subject material not covered in the FMR. The Office of the Federal Register assigns chapters in Title 41 of the Code of Federal Regulations for agency publication of implementing and supplementing regulations.

NUMBERING

§ 102-2.45 How is the FMR numbered?

(a) All FMR sections are designated by three numbers. The following example illustrates the chapter (it's always 102), part, and section designations:



(b) In the looseleaf version, the month, year, and number of FMR amendments appear at the bottom of each page.

§ 102-2.50 How do I number my agency's implementing regulations?

The first three-digit number represents the chapter number assigned to your agency in Title 41 of the CFR. The part and section numbers correspond to FMR material. For example, if your agency is assigned Chapter 130 in Title 41 of the CFR and you are implementing § 102-2.60 of the FMR, your implementing section would be numbered § 130-2.60.

§ 102-2.55 How do I number my agency's supplementing regulations?

Since there is no corresponding FMR material, number the supplementing material "601" or higher. For example, your agency's supplementing regulations governing special services to states might start with § 130-601.5.

DEVIATIONS

§ 102-2.60 What is a deviation from the FMR?

A deviation from the FMR is an agency action or policy that is inconsistent with the regulation. (The deviation policy for the FPMR is in 41 CFR part 101-1.)

§ 102-2.65 When may agencies deviate from the FMR?

Because, it consists primarily of set policies and mandatory requirements, deviation from the FMR should occur infrequently. However, to address unique circumstances or to test the effectiveness of potential policy changes, agencies may be able to deviate from the FMR after following the steps described in § 102-2.80.

§ 102-2.70 What are individual and class deviations?

An individual deviation is intended to affect only one action. A class deviation is intended to affect more than one action (e.g., multiple actions, the actions of more than one agency, or individual agency actions that are expected to recur).

§ 102-2.75 What timeframes apply to deviations?

Timeframes vary based on the nature of the deviation. However, deviations cannot be open-ended. When consulting with GSA about using an individual or class deviation, you must set a timeframe for the deviation's duration.

§ 102-2.80 What steps must an agency take to deviate from the FMR?

(a) Consult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them. The consultation process may also highlight reasons why an agency would not be permitted to deviate from the FMR; e.g., statutory constraints.

(b) Formally request a deviation, if consultations indicate that your agency needs one. The head of your agency or a designated official should write to GSA's Regulatory Secretariat to the attention of a GSA official in the program office that is likely to consider the deviation. (See the FMR bulletin that lists contacts in GSA's program offices and § 102-2.90.) The written request must fully explain the reasons for the deviation, including the benefits that the agency expects to achieve.

§ 102-2.85 What are the reasons for writing to GSA about FMR deviations?

The reasons for writing are to:

§ 102-2.90

(a) Explain your agency's rationale for the deviation. Before it can adequately comment on a potential deviation from the FMR, GSA must know why it is needed. GSA will compare your need against the applicable policies and regulations.

(b) Obtain clarification from GSA as to whether statutes, Executive orders, or other controlling policies, which may not be evident in the regulation, preclude deviating from the FMR for the reasons stated.

(c) Establish a timeframe for using a deviation.

(d) Identify potential changes to the FMR.

(e) Identify the benefits and other results that the agency expects to achieve.

§ 102-2.90 Where should my agency send its correspondence on an FMR deviation?

Send correspondence to: General Services Administration, Regulatory Secretariat (MVRs), Office of Governmentwide Policy, 1800 F Street, NW, Washington, DC 20405.

§ 102-2.95 What information must agencies include in their deviation letters to GSA?

Agencies must include:

(a) The title and citation of the FMR provision from which the agency wishes to deviate;

(b) The name and telephone number of an agency contact who can discuss the reason for the deviation;

(c) The reason for the deviation;

(d) A statement about the expected benefits of using the deviation (to the extent possible, expected benefits should be stated in measurable terms);

(e) A statement about possible use of the deviation in other agencies or Governmentwide; and

(f) The duration of the deviation.

§ 102-2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?

Yes, agencies that deviate from the FMR must also write to the relevant GSA program office at the Regulatory Secretariat's address (see § 102-2.90) to describe their experiences in using a deviation.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-2.105 What information must agencies include in their follow-up analysis?

In your follow-up analysis, provide information that may include, but should not be limited to, specific actions taken or not taken as a result of the deviation, outcomes, impacts, anticipated versus actual results, and the advantages and disadvantages of taking an alternative course of action.

§ 102-2.110 When must agencies provide their follow-up letters?

(a) For an individual deviation, once the action is complete.

(b) For a class deviation, at the end of each twelve-month period from the time you first took the deviation and at the end of the deviation period.

NON-REGULATORY MATERIAL

§ 102-2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

As GSA converts the FPMR to the FMR, non-regulatory materials in the FPMR, such as guidance, procedures, standards, and information, that describe how to do business with GSA, will become available in separate documents. These documents may include customer service guides, handbooks, brochures, Internet websites, and FMR bulletins. GSA will eliminate non-regulatory material that is no longer needed.

§ 102-2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?

Periodically, GSA will issue for your reference an FMR bulletin that lists program contacts with whom agencies can discuss regulatory requirements. At a minimum, the list will contain organization names and telephone numbers for each program addressed in the FMR.

§ 102-2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

The FMR establishes policy; it does not specify procedures for the acquisition of GSA services. However, as a service to users during the transition

Federal Management Regulation

Pt. 102-3

from the FPMR to the FMR and as needed thereafter, GSA will issue FMR bulletins to identify where to find information on how to do business with GSA. References include customer service guides, handbooks, brochures, Internet websites, etc.

Subpart B—Forms

§ 102-2.130 Where are FMR forms prescribed?

In any of its parts, the FMR may prescribe forms and the requirements for using them.

§ 102-2.135 How do agencies obtain forms prescribed by the FMR?

For copies of the forms prescribed by in the FMR, do any of the following:

(a) Write to us at: General Services Administration, National Forms and Publications Center (7CPN), Warehouse 4, Dock No. 1, 501 West Felix Street, Fort Worth, TX 76115.

(b) Send e-mail messages to: NFPC@gsa-7FDepot.

(c) Visit our web site at: www.gsa.gov/forms/forms.htm.

Subpart C—Plain Language Regulatory Style

§ 102-2.140 What elements of plain language appear in the FMR?

The FMR is written in a “plain language” regulatory style. This style is easy to read and uses a question and answer format directed at the reader, active voice, shorter sentences, and, where appropriate, personal pronouns.

§ 102-2.145 To what do pronouns refer when used in the FMR?

Throughout its text, the FMR may contain pronouns such as, but not limited to, we, you, and I. When pronouns are used, each subchapter of the FMR will indicate whether they refer to the reader, an agency, GSA, or some other entity. In general, pronouns refer to who or what must perform a required action.

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

102-3.5 What does this subpart cover and how does it apply?

102-3.10 What is the purpose of the Federal Advisory Committee Act?

102-3.15 Who are the intended users of this part?

102-3.20 How does this part meet the needs of its audience?

102-3.25 What definitions apply to this part?

102-3.30 What policies govern the use of advisory committees?

102-3.35 What policies govern the use of subcommittees?

102-3.40 What types of committees or groups are not covered by the Act and this part?

APPENDIX A TO SUBPART A OF PART 102-3—KEY POINTS AND PRINCIPLES

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

102-3.45 What does this subpart cover and how does it apply?

102-3.50 What are the authorities for establishing advisory committees?

102-3.55 What rules apply to the duration of an advisory committee?

102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

102-3.65 What are the public notification requirements for discretionary advisory committees?

102-3.70 What are the charter filing requirements?

102-3.75 What information must be included in the charter of an advisory committee?

102-3.80 How are minor charter amendments accomplished?

102-3.85 How are major charter amendments accomplished?

APPENDIX A TO SUBPART B OF PART 102-3—KEY POINTS AND PRINCIPLES

Subpart C—How Are Advisory Committees Managed?

102-3.90 What does this subpart cover and how does it apply?

102-3.95 What principles apply to the management of advisory committees?

102-3.100 What are the responsibilities and functions of GSA?

102-3.105 What are the responsibilities of an agency head?

§ 102-3.5

- 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
- 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
- 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
- 102-3.125 How should agencies consider the roles of advisory committee members and staff?
- 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

APPENDIX A TO SUBPART C OF PART 102-3—KEY POINTS AND PRINCIPLES

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.135 What does this subpart cover and how does it apply?
- 102-3.140 What policies apply to advisory committee meetings?
- 102-3.145 What policies apply to subcommittee meetings?
- 102-3.150 How are advisory committee meetings announced to the public?
- 102-3.155 How are advisory committee meetings closed to the public?
- 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
- 102-3.165 How are advisory committee meetings documented?
- 102-3.170 How does an interested party obtain access to advisory committee records?
- 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

APPENDIX A TO SUBPART D OF PART 102-3—KEY POINTS AND PRINCIPLES

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.180 What does this subpart cover and how does it apply?
- 102-3.185 What does this subpart require agencies to do?

APPENDIX A TO SUBPART E OF PART 102-3—KEY POINTS AND PRINCIPLES

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

SOURCE: At 66 FR 37733, July 19, 2001, unless otherwise noted.

41 CFR Ch. 102 (7-1-02 Edition)

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102-3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102-3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102-3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

(1) Executive branch officials and others outside Government currently involved with an established advisory committee;

(2) Executive branch officials who seek to establish or utilize an advisory committee;

(3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and

(4) Field personnel of Federal agencies who are increasingly involved with

Federal Management Regulation

§ 102-3.25

the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102-3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability*. This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines*. This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles*. This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102-3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer ("CMO"), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat ("Secretariat"), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer ("DFO"), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is

established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102-3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an ad-

visory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory

Federal Management Regulation

§ 102-3.40

only, unless specifically provided by statute or Presidential directive.

§ 102-3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102-3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual

basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered

Pt. 102-3, Subpt. A, App. A

by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under the requirements of the Act and this part.

41 CFR Ch. 102 (7-1-02 Edition)

**APPENDIX A TO SUBPART A OF PART 102-
3—KEY POINTS AND PRINCIPLES**

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.	102-3.25, 102-3.40(d), 102-3.40(f)	1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners?"	A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency. B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102-3.25, 102-3.40(d), 102-3.40(f)	1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped?	A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102-3.40(e)	1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an "individual" apply only to "natural persons?"	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations "as a group." (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting "as a group" under the Act. (ii) In this respect, "individual" is not limited to "natural persons." Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person's organization without violating the Act, if those organizations themselves are not "managed or controlled" by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102-3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M-95-20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405-0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform "operational" duties by the Congress or by Presidential directive.	102-3.30(e), 102-3.40(k)	1. Are "operational committees" subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the "primary" mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decision-making or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily "operational" functions are not subject to the Act.	102-3.40(k)	1. What characteristics are common to "operational committees?" 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation's parks. Part of the committee's role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA?	A. In answer to question 1, non-advisory, or "operational" committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program. B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily "operational" and not covered by FACA. C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.
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Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102-3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the FEDERAL REGISTER, and amending an advisory committee charter.

§ 102-3.50 What are the authorities for establishing advisory committees?

FACA identifies four sources of authority for establishing an advisory committee:

- (a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);
- (b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);
- (c) *Authorized by statute.* By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or
- (d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).

§ 102-3.55 What rules apply to the duration of an advisory committee?

- (a) An advisory committee automatically terminates two years after its date of establishment unless:
 - (1) The statutory authority used to establish the advisory committee provides a different duration;
 - (2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

- (3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

- (4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102-3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102-3.30(b), it can be reestablished in accordance with § 102-3.60.

- (b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

- (a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102-3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

- (b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

- (1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;
- (2) *Lack of duplication of resources.* An explanation stating why the advisory

Federal Management Regulation

§ 102-3.75

committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the FEDERAL REGISTER is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the FEDERAL REGISTER announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in ac-

cordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540-4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102-3.75.

§ 102-3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

§ 102-3.80

41 CFR Ch. 102 (7-1-02 Edition)

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102-3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102-3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102-3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102-3.70.

§ 102-3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in objectives and scope, duties, and estimated costs, are the same as in § 102-3.80, except that for discretionary advisory committees an agency must:

(a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and

(b) File the amended charter as specified in § 102-3.70.

APPENDIX A TO SUBPART B OF PART 102-3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102-3.60, 102-3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102-3.60(a), 102-3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102-3.105(e) and reflect consultation with the Secretariat under § 102-3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102-3.30(c), 102-3.60(b)(3)	1. What factors should be considered in achieving a "balanced" advisory committee membership?	A. The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102-3.70(b)	1. If an advisory committee's duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Subpart C—How Are Advisory Committees Managed?

§ 102-3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102-3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, limitations, if any, on its duties, and the agency's goals and objectives. In general, the more specific an advisory committee's tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102-3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

(1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;

(2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;

(3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;

(4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;

(5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and

(6) Providing recommendations for transmittal by the Administrator to the Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102-3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

Federal Management Regulation

§ 102-3.120

(a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;

(c) Designate a Committee Management Officer (CMO);

(d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;

(e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;

(f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;

(g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;

(i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and

(j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to §102-3.140 and the agency's guidelines.

§102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

(a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to §102-3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by §102-3.105.

§102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

(a) Approve or call the meeting of the advisory committee or subcommittee;

(b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(c) Attend the meetings;

(d) Adjourn any meeting when he or she determines it to be in the public interest; and

(e) Chair the meeting when so directed by the agency head.

§ 102-3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff

appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5

Federal Management Regulation

§ 102-3.130

U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS-15, step 10 rate, excluding locality pay or any other sup-

plement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their duties away from their homes or regular

Pt. 102-3, Subpt. C, App. A

41 CFR Ch. 102 (7-1-02 Edition)

places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(1) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as an individual with disabilities as pro-

vided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

APPENDIX A TO SUBPART C OF PART 102-3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102-3.105, 102-3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff. B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements. C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102-3.130(a)	1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization? 2. If so, can different persons represent the organization at different meetings?	A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members. B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102-3.130(d), 102-3.130(e), 102-3.130(g) ..	1. May members and staff be compensated for their service or duties on an advisory committee? 2. Are the guidelines the same for compensating both members and staff? 3. May experts and consultants be employed to perform other advisory committee work?	A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency “may” pay members on either an hourly or a daily rate basis, and “may not” provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency “must” pay staff on an hourly rate basis only, and “may” provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year. C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)
IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..	102–3.105(h)	1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules? 2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?	A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member’s status. The determination of a member’s status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a “representative” or a “special Government employee” (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes, while representatives are not subject to these ethics requirements. B. The answer to question 2 is the agency’s Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.
V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..	102–3.105(c), 102–3.105(i)	1. Must an agency’s CMO and each advisory committee DFO be appointed by the agency head?	A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency’s policies and procedures.

		2. May an agency have more than one CMO?	B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its sub-components, which are subordinate to the CMO's agencywide responsibilities and functions.
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102-3.125(c)	1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?	A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102-3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102-3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102-3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meet-

ings must be conducted in accordance with all openness requirements of this subpart.

§ 102-3.150 How are advisory committee meetings announced to the public?

(a) A notice in the FEDERAL REGISTER must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the FEDERAL REGISTER.

§ 102-3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102-3.150.

Federal Management Regulation

§ 102-3.175

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102-3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify

the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102-3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has

submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to §102-3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with §102-3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency re-

port control number (IRCN) 0304-GSA-AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified §102-3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29-33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

APPENDIX A TO SUBPART D OF PART 102-3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102-3.140, 102-3.145(a), 102-3.155	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the Federal Register announcing advisory committee meetings.	102-3.150	1. Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102-3.150. (i) "Blanket notices" should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee's schedule. (ii) An agency's Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.
III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.	102-3.170	1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?	A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
			(i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged “inter-agency or intra-agency” documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002.)

IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.	102–175(e)	1. How must advisory committee records be treated and preserved?	A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA. B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA. C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee. D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.
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Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102-3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart, NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102-3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substan-

tially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures substantially have been complied with in performing the work required under the agreement.

APPENDIX A TO SUBPART E OF PART 102-3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102-3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102-3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.

**PART 102-4—NONDISCRIMINATION
IN FEDERAL FINANCIAL ASSIST-
ANCE PROGRAMS [RESERVED]**

**PART 102-5—HOME-TO-WORK
TRANSPORTATION**

Subpart A—General

Sec.

102-5.5 Preamble.

102-5.10 What does this part cover?

102-5.15 Who is covered by this part?

102-5.20 Who is not covered by this part?

102-5.25 What additional guidance con-
cerning home-to-work transportation
should Federal agencies issue?

102-5.30 What definitions apply to this part?

**Subpart B—Authorizing Home-to-Work
Transportation**

102-5.35 Who is authorized home-to-work
transportation?

102-5.40 May the agency head delegate the
authority to make home-to-work deter-
minations?

102-5.45 Should determinations be com-
pleted before an employee is provided
with home-to-work transportation?

102-5.50 May determinations be made in ad-
vance for employees who respond to un-
usual circumstances when they arise?

102-5.55 How do we prepare determinations?

102-5.60 How long are initial determinations
effective?

102-5.65 What procedures apply when the
need for home-to-work transportation
exceeds the initial period?

102-5.70 What considerations apply in mak-
ing a determination to authorize home-
to-work transportation for field work?

102-5.75 What circumstances do not estab-
lish a basis for authorizing home-to-work
transportation for field work?

102-5.80 What are some examples of posi-
tions that may involve field work?

102-5.85 What information should our deter-
mination for field work include if posi-
tions are identified rather than named
individuals?

102-5.90 Should an agency consider whether
to base a Government passenger carrier
at a Government facility near the em-
ployee's home or work rather than au-
thorize the employee home-to-work
transportation?

102-5.95 Is the comfort and/or convenience
of an employee considered sufficient jus-
tification to authorize home-to-work
transportation?

102-5.100 May we use home-to-work trans-
portation for other than official pur-
poses?

102-5.105 May others accompany an em-
ployee using home-to-work transpor-
tation?

**Subpart C—Documenting and Reporting
Determinations**

102-5.110 Must we report our determinations
outside of our agency?

102-5.115 When must we report our deter-
minations?

102-5.120 What are our responsibilities for
documenting use of home-to-work trans-
portation?

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40
U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

SOURCE: 65 FR 54966, Sept. 12, 2000, unless
otherwise noted.

Subpart A—General

§ 102-5.5 Preamble.

(a) The questions and associated an-
swers in this part are regulatory in ef-
fect. Thus compliance with the written
text of this part is required by all to
whom it applies.

(b) The terms “we,” “I,” “our,”
“you,” and “your,” when used in this
part, mean you as a Federal agency, an
agency head, or an employee, as appro-
priate.

§ 102-5.10 What does this part cover?

This part covers the use of Govern-
ment passenger carriers to transport
employees between their homes and
places of work.

§ 102-5.15 Who is covered by this part?

This part covers Federal agency em-
ployees in the executive, judicial, and
legislative branches of the Govern-
ment, with the exception of employees
of the Senate, House of Representa-
tives, Architect of the Capitol, and
government of the District of Colum-
bia.

**§ 102-5.20 Who is not covered by this
part?**

This part does not cover:

(a) Employees who are on official
travel (TDY); or

(b) Employees who are on permanent
change of station (PCS) travel; or

(c) Employees who are essential for
the safe and efficient performance of

Federal Management Regulation

§ 102-5.30

intelligence, counterintelligence, protective services, or criminal law enforcement duties when designated in writing as such by their agency head.

§ 102-5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?

Each Federal agency using Government passenger carriers to provide home-to-work transportation for employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties should issue guidance concerning such use.

§ 102-5.30 What definitions apply to this part?

The following definitions apply to this part:

Agency head means the highest official of a Federal agency.

Clear and present danger means highly unusual circumstances that present a threat to the physical safety of the employee or their property when the danger is:

- (1) Real; and
- (2) Immediate or imminent, not merely potential; and
- (3) The use of a Government passenger carrier would provide protection not otherwise available.

Compelling operational considerations means those circumstances where home-to-work transportation is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy.

Emergency means circumstances that exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees necessary to the uninterrupted performance of the agency's mission. (An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential Government service must be provided, and there is no other way to transport those employees.)

Employee means a Federal officer or employee of a Federal agency, including an officer or enlisted member of the Armed Forces.

Federal agency means:

(1) A department (as defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));

(2) An executive department (as defined in 5 U.S.C. 101);

(3) A military department (as defined in 5 U.S.C. 102);

(4) A Government corporation (as defined in 5 U.S.C. 103(1));

(5) A Government controlled corporation (as defined in 5 U.S.C. 103(2));

(6) A mixed-ownership Government corporation (as defined in 31 U.S.C. 9101(2));

(7) Any establishment in the executive branch of the Government (including the Executive Office of the President);

(8) Any independent regulatory agency (including an independent regulatory agency specified in 44 U.S.C. 3502(10));

(9) The Smithsonian Institution;

(10) Any nonappropriated fund instrumentality of the United States; and

(11) The United States Postal Service.

Field work means official work requiring the employee's presence at various locations other than his/her regular place of work. (Multiple stops (itinerant-type travel) within the accepted local commuting area, limited use beyond the local commuting area, or transportation to remote locations that are only accessible by Government-provided transportation are examples of field work.)

Home means the primary place where an employee resides and from which the employee commutes to his/her place of work.

Home-to-work transportation means the use of a Government passenger carrier to transport an employee between his/her home and place of work.

Passenger carrier means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned (including those that have come into the possession of the Government by forfeiture or donation), leased, or rented (non-TDY) by the United States Government.

Work means any place within the accepted commuting area, as determined by the Federal agency for the locality involved, where an employee performs his/her official duties.

Subpart B—Authorizing Home-to-Work Transportation

§ 102-5.35 Who is authorized home-to-work transportation?

By statute, certain Federal officials are authorized home-to-work transportation, as are employees who meet certain statutory criteria as determined by their agency head. The Federal officials authorized by statute are the President, the Vice-President, and other principal Federal officials and their designees, as provided in 31 U.S.C. 1344(b)(1) through (b)(7). Those employees engaged in field work, or faced with a clear and present danger, an emergency, or a compelling operational consideration may be authorized home-to-work transportation as determined by their agency head. No other employees are authorized home-to-work transportation.

§ 102-5.40 May the agency head delegate the authority to make home-to-work determinations?

No, the agency head may not delegate the authority to make home-to-work determinations.

§ 102-5.45 Should determinations be completed before an employee is provided with home-to-work transportation?

Yes, determinations should be completed before an employee is provided with home-to-work transportation unless it is impracticable to do so.

§ 102-5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?

Yes, determinations may be made in advance when the Federal agency wants to have employees ready to respond to:

- (a) A clear and present danger;
- (b) An emergency; or
- (c) A compelling operational consideration.

NOTE TO § 102-5.50: Implementation of these determinations is contingent upon one of the three circumstances occurring. Thus, these may be referred to as “contingency determinations.”

§ 102-5.55 How do we prepare determinations?

Determinations must be in writing and include the:

- (a) Name and title of the employee (or other identification, if confidential);
- (b) Reason for authorizing home-to-work transportation; and
- (c) Anticipated duration of the authorization.

§ 102-5.60 How long are initial determinations effective?

Initial determinations are effective for no longer than:

- (a) Two years for field work, updated as necessary; and
- (b) Fifteen days for other circumstances.

§ 102-5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?

The agency head may approve unlimited subsequent determinations, when the need for home-to-work transportation exceeds the initial period, for no longer than:

- (a) Two years each for field work, updated as necessary; and
- (b) Ninety calendar days each for other circumstances.

§ 102-5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?

Agencies should consider the following when making a determination to authorize home-to-work transportation for field work:

- (a) The location of the employee's home in proximity to his/her work and to the locations where non-TDY travel is required; and
- (b) The use of home-to-work transportation for field work should be authorized only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

Federal Management Regulation

§ 102-5.105

§ 102-5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?

The following circumstances do not establish a basis for authorizing home-to-work transportation for field work:

(a) When an employee assigned to field work is not actually performing field work.

(b) When the employee's workday begins at his/her work; or

(c) When the employee normally commutes to a fixed location, however far removed from his/her official duty station (for example, auditors or investigators assigned to a defense contractor plant).

NOTE TO § 102-5.75: For instances where an employee is authorized home-to-work transportation under the field work provision, but performs field work only on an intermittent basis, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed. Although some employees' daily work station is not located in a Government office, these employees are not performing field work. Like all Government employees, employees working in a "field office" are responsible for their own commuting costs.

§ 102-5.80 What are some examples of positions that may involve field work?

Examples of positions that may involve field work include, but are not limited to:

- (a) Quality assurance inspectors;
- (b) Construction inspectors;
- (c) Dairy inspectors;
- (d) Mine inspectors;
- (e) Meat inspectors; and
- (f) Medical officers on outpatient service.

NOTE TO § 102-5.80: The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation.

§ 102-5.85 What information should our determination for field work include if positions are identified rather than named individuals?

If positions are identified rather than named individuals, your determination for field work should include sufficient information to satisfy an audit, if necessary. This information should in-

clude the job title, number, and operational level where the work is to be performed (e.g., five recruiter personnel or, positions at the Detroit Army Recruiting Battalion).

NOTE TO § 102-5.85: An agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs.

§ 102-5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?

Yes, situations may arise where, for cost or other reasons, it is in the Government's interest to base a Government passenger carrier at a Government facility located near the employee's home or work rather than authorize the employee home-to-work transportation.

§ 102-5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?

No, the comfort and/or convenience of an employee is not considered sufficient justification to authorize home-to-work transportation.

§ 102-5.100 May we use home-to-work transportation for other than official purposes?

No, you may not use home-to-work transportation for other than official purposes. However, if your agency has prescribed rules for the incidental use of Government vehicles (as provided in 31 U.S.C. note), you may use the vehicle in accordance with those rules in connection with an existing home-to-work authorization.

§ 102-5.105 May others accompany an employee using home-to-work transportation?

Yes, an employee authorized home-to-work transportation may share space in a Government passenger carrier with other individuals, provided that the passenger carrier does not travel additional distances as a result and such sharing is consistent with his/her Federal agency's policy. When a Federal agency establishes its space

§ 102-5.110

sharing policy, the Federal agency should consider its potential liability for and to those individuals. Home-to-work transportation does not extend to the employee's spouse, other relatives, or friends unless they travel with the employee from the same point of departure to the same destination, and this use is consistent with the Federal agency's policy.

Subpart C—Documenting and Reporting Determinations

§ 102-5.110 Must we report our determinations outside of our agency?

Yes, you must submit your determinations to the following Congressional Committees:

(a) Chairman, Committee on Governmental Affairs, United States Senate, Suite SD-340, Dirksen Senate Office Building, Washington, DC 20510-6250; and

(b) Chairman, Committee on Governmental Reform, United States House of Representatives, Suite 2157, Rayburn House Office Building, Washington, DC 20515-6143.

§ 102-5.115 When must we report our determinations?

You must report your determinations to Congress no later than 60 calendar

41 CFR Ch. 102 (7-1-02 Edition)

days after approval. You may consolidate any subsequent determinations into a single report and submit them quarterly.

§ 102-5.120 What are our responsibilities for documenting use of home-to-work transportation?

Your responsibilities for documenting use of home-to-work transportation are that you must maintain logs or other records necessary to verify that any home-to-work transportation was for official purposes. Each agency may decide the organizational level at which the logs should be maintained and kept. The logs or other records should be easily accessible for audit and should contain:

(a) Name and title of employee (or other identification, if confidential) using the passenger carrier;

(b) Name and title of person authorizing use;

(c) Passenger carrier identification;

(d) Date(s) home-to-work transportation is authorized;

(e) Location of residence;

(f) Duration; and

(g) Circumstances requiring home-to-work transportation.

PARTS 102-6—102-30 [RESERVED]

SUBCHAPTER B—PERSONAL PROPERTY

PART 102-31—GENERAL [RESERVED]

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

PART 102-33—MANAGEMENT OF AIRCRAFT [RESERVED]

PART 102-34—MOTOR VEHICLE MANAGEMENT

Sec.

102-34.5 Preamble.

102-34.10 What definitions apply to motor vehicle management?

102-34.15 What motor vehicles are not covered by this part?

102-34.20 What types of motor vehicle fleets are there?

102-34.25 What sources of supply are available for obtaining motor vehicles?

Subpart A—Obtaining Fuel Efficient Motor Vehicles

102-34.30 Who must comply with motor vehicle fuel efficiency requirements?

102-34.35 What are the procedures for purchasing and leasing motor vehicles?

102-34.40 How are passenger automobiles classified?

102-34.45 What size motor vehicles may we purchase and lease?

102-34.50 What are fleet average fuel economy standards?

102-34.55 What are the minimum fleet average fuel economy standards?

102-34.60 How do we calculate the average fuel economy for our fleet?

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

102-34.70 How does GSA monitor the fuel economy of purchased and leased motor vehicles?

102-34.75 How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease?

102-34.80 Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division?

102-34.85 Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year?

102-34.90 Are any motor vehicles exempted from these reporting requirements?

102-34.95 Does fleet average fuel economy reporting affect our acquisition plan?

102-34.100 Where may we obtain help with our motor vehicle acquisition plan?

Subpart B—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

102-34.105 What motor vehicles require motor vehicle identification?

102-34.110 What motor vehicle identification must we put on motor vehicles we purchase or lease?

102-34.115 What motor vehicle identification must the Department of Defense (DOD) put on motor vehicles it purchases or leases?

102-34.120 Where is motor vehicle identification placed on purchased and leased motor vehicles?

102-34.125 Before we sell a motor vehicle, what motor vehicle identification or markings must we remove?

LICENSE PLATES

102-34.130 Must our motor vehicles use Government license plates?

102-34.135 Do we need to register motor vehicles owned or leased by the Government?

102-34.140 Where may we obtain U.S. Government license plates?

102-34.145 How do we display license plates on motor vehicles?

102-34.150 What do we do about a lost or stolen license plate?

102-34.155 What records do we need to keep on U.S. Government license plates?

102-34.160 How are U.S. Government license plates coded and numbered?

102-34.165 How can we get a new license plate code designation?

102-34.170 Are there special licensing procedures for motor vehicles operating in the District of Columbia (DC)?

IDENTIFICATION EXEMPTIONS

102-34.175 What types of exemptions are there?

102-34.180 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

102-34.185 What information must the certification contain?

102-34.190 For how long is a limited exemption valid?

102-34.195 What agencies have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

§ 102-34.5

- 102-34.200 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification?
- 102-34.205 What license plates and motor vehicle identification do we use on motor vehicles that are exempt from motor vehicle identification and U.S. Government license plates?
- 102-34.210 What special requirements apply to exempted motor vehicles operating in the District of Columbia?
- 102-34.215 Can GSA ask for a listing of exempted motor vehicles?

Subpart C—Official Use of Government Motor Vehicles

- 102-34.220 What is official use of a motor vehicle owned or leased by the Government?
- 102-34.225 May I use a motor vehicle owned or leased by the Government for transportation between my residence and place of employment?
- 102-34.230 May Government contractors use motor vehicles owned or leased by the Government?
- 102-34.235 What does GSA do if it learns of unofficial use of a motor vehicle owned or leased by the Government?
- 102-34.240 How are Federal employees disciplined for misuse of motor vehicles owned or leased by the Government?
- 102-34.245 How am I responsible for protecting motor vehicles?
- 102-34.250 Am I bound by State and local traffic laws?
- 102-34.255 Who pays for parking fees and fines?
- 102-34.260 Do Federal employees in motor vehicles owned or leased by the Government have to use safety belts?

Subpart D—Replacement of Motor Vehicles

- 102-34.265 What are motor vehicle replacement standards?
- 102-34.270 May we replace a Government-owned motor vehicle sooner?
- 102-34.275 May we keep a Government-owned motor vehicle even though the standard permits replacement?
- 102-34.280 How long must we keep a Government-owned motor vehicle?

Subpart E—Scheduled Maintenance of Motor Vehicles

- 102-34.285 What kind of maintenance programs must we have?
- 102-34.290 Must our motor vehicles pass State inspections?
- 102-34.295 Where can we obtain help in setting up a maintenance program?

41 CFR Ch. 102 (7-1-02 Edition)

Subpart F—Motor Vehicle Accident Reporting

- 102-34.300 What forms do I use to report an accident involving a motor vehicle owned or leased by the Government?
- 102-34.305 To whom do we send accident reports?

Subpart G—Disposal of Motor Vehicles

- 102-34.310 How do we dispose of a motor vehicle in any State, Commonwealth, territory or possession of the United States, or the District of Columbia?
- 102-34.315 What forms do we use to transfer ownership when selling a motor vehicle?
- 102-34.320 How do we distribute the completed Standard Form 97?

Subpart H—Motor Vehicle Fueling

- 102-34.325 How do we obtain fuel for motor vehicles?
- 102-34.330 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?
- 102-34.335 What type of fuel do I use in motor vehicles?
- 102-34.340 Do I have to use self-service fuel pumps?

Subpart I—Federal Motor Vehicle Fleet Report

- 102-34.345 What is the Federal Motor Vehicle Fleet Report?
- 102-34.350 What records do we need to keep?
- 102-34.355 When and how do we report motor vehicle data?

Subpart J—Forms

- 102-34.360 How do we obtain the forms prescribed in this part?

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

SOURCE: 64 FR 59593, Nov. 2, 1999, unless otherwise noted.

§ 102-34.5 Preamble.

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

(b) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all executive agencies.

Federal Management Regulation

§ 102-34.10

(c) The terms “we,” “I,” “our,” “you,” and “your,” when used in this part, mean you as an executive agency, as your agency’s fleet manager, or as a motor vehicle user or operator, as appropriate.

§ 102-34.10 What definitions apply to motor vehicle management?

The following definitions apply to motor vehicle management:

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

Domestic fleet (see § 102-34.20(a)).

Foreign fleet (see § 102-34.20(b)).

GSA Fleet lease (see § 102-34.25(d)).

Large fleet (see § 102-34.20(d)).

Law enforcement motor vehicle means a passenger automobile or light truck that is specifically approved in an agency’s appropriation act for use in apprehension, surveillance, police or other law enforcement work or specifically designed for use in law enforcement. If not identified in an agency’s appropriation language, a motor vehicle qualifies as a law enforcement motor vehicle only in the following cases:

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

(2) A light truck having emergency warning lights and identified with markings such as “police.”

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

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

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

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

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

Motor vehicle means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a military design motor vehicle or vehicles not covered by this part (see § 102-34.15).

Motor vehicle identification (also referred to as “motor vehicle markings”) means the legends “For Official Use Only” and “U.S. Government” placed on a motor vehicle plus other legends showing the full name of the department, agency, establishment, corporation, or service by which the motor vehicle is used. This identification is usually a decal placed in the rear window or on the side of the motor vehicle.

Motor vehicle lease (see § 102-34.25(b)).

Motor vehicle markings (see “Motor vehicle identification” in this section).

Motor vehicle purchase (see § 102-34.25(a)).

Motor vehicle rental (see § 102-34.25(c)).

Motor vehicles transferred from excess (see § 102-34.25(e)).

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

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

Reportable motor vehicles are vehicles which are reported to GSA as outlined in Subpart I of this part:

(1) Included are sedans, station wagons, buses, ambulances, vans, utility motor vehicles, trucks and truck tractors, regardless of fuel type.

(2) Excluded are fire trucks, motorcycles, military-design motor vehicles, semi-trailers, trailers and other trailing equipment such as pole trailers, dollies, cable reels, trailer coaches and bogies, and trucks with permanently mounted equipment such as generators and air compressors.

Small fleet (see § 102-34.20(c)).

§ 102-34.15

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

§ 102-34.15 What motor vehicles are not covered by this part?

Motor vehicles not covered are:

- (a) Designed or used for military field training, combat, or tactical purposes;
- (b) Used principally within the confines of a regularly established military post, camp, or depot; or
- (c) Used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of such agency determines that exclusive control of such vehicle is essential to the effective performance of such duties, although such vehicles are subject to subpart C and subpart I of this part.

§ 102-34.20 What types of motor vehicle fleets are there?

The types of motor vehicle fleets are:

- (a) *Domestic fleet* means all reportable agency-owned motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.
- (b) *Foreign fleet* means all reportable agency-owned motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.
- (c) *Small fleet* means a fleet of fewer than 2,000 reportable agency-owned motor vehicles, worldwide.
- (d) *Large fleet* means a fleet of 2,000 or more reportable agency-owned motor vehicles, worldwide.

§ 102-34.25 What sources of supply are available for obtaining motor vehicles?

The following sources of supply are available:

- (a) *Motor vehicle purchase* means buying a motor vehicle from a commercial source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership.

41 CFR Ch. 102 (7-1-02 Edition)

(b) *Motor vehicle lease* means obtaining a motor vehicle by contract or other arrangement from a commercial source for 60 continuous days or more.

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

(d) *GSA Fleet lease* means obtaining a motor vehicle from the General Services Administration (GSA Fleet). Where "lease" is used alone within this part, it refers to "motor vehicle lease" in paragraph (b) of this section and not GSA Fleet lease.

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

Subpart A—Obtaining Fuel Efficient Motor Vehicles

§ 102-34.30 Who must comply with motor vehicle fuel efficiency requirements?

Executive agencies located in any State, Commonwealth, territory or possession of the United States, and the District of Columbia which operate motor vehicles owned or leased by the Government in the conduct of official business. This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement and motor vehicles in foreign areas. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing motor vehicles owned or leased by the Government.

§ 102-34.35 What are the procedures for purchasing and leasing motor vehicles?

Procedures for purchasing and leasing motor vehicles can be found in subpart 101-26.5 of this title.

§ 102-34.40 How are passenger automobiles classified?

Passenger automobiles are classified in the following table:

Sedan class	Station wagon class	Descriptive name
I	I	Subcompact.
II	II	Compact.

Federal Management Regulation

§ 102-34.60

Sedan class	Station wagon class	Descriptive name
III	III	Midsize
IV	IV	Large.
V		Limousine.

§ 102-34.45 What size motor vehicles may we purchase and lease?

(a) You must select motor vehicles to achieve maximum fuel efficiency.

(b) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet your agency's mission.

(c) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, you must purchase and lease midsize (class III) or smaller sedans.

(d) Purchase and lease large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

§ 102-34.50 What are fleet average fuel economy standards?

(a) The minimum miles per gallon that a fleet of motor vehicles purchased or leased by an executive agency must obtain. The need to meet these standards is set forth in 49 U.S.C. 32917, Standards for Executive Agency Automobiles, and Executive Order 12375, Motor Vehicles. These standards have two categories:

(1) Average fuel economy standard for all passenger automobiles.

(2) Average fuel economy standard for light trucks.

(b) These standards do not apply to passenger automobiles and light trucks designed to perform combat-related missions for the U.S. Armed Forces or motor vehicles designed for use in law enforcement or emergency rescue work.

§ 102-34.55 What are the minimum fleet average fuel economy standards?

The minimum fleet average fuel economy standards appear in the following table:

FLEET AVERAGE FUEL ECONOMY STANDARDS ^A

Fiscal year	Passenger automobile ¹	Light truck ²
1995	27.5	20.6 ³
1996	27.5	20.7 ³
1997	27.5	20.7 ³
1998	27.5	20.7 ³
1999	27.5	20.7 ³
2000 & beyond	27.5	(⁴)

^A These figures represent miles/gallon.

¹ Established by section 49 U.S.C. 32902 and the Secretary of Transportation.

² Fleet average fuel economy standard set by the Secretary of Transportation and mandated by Executive Order 12375 beginning in fiscal year 1982.

³ Fleet average fuel economy for light trucks is the combined fleet average fuel economy for all 4 × 2 and 4 × 4 light trucks.

⁴ Requirements not yet set by the Secretary of Transportation.

§ 102-34.60 How do we calculate the average fuel economy for our fleet?

(a) Due to the variety of motor vehicle configurations, you must take an average of all motor vehicles, by category (passenger automobiles or light truck) purchased and leased by your agency during the fiscal year. This calculation is the sum of passenger automobiles or light trucks that your executive agency purchases or leases from commercial sources divided by the sum of the fractions representing the number of motor vehicles of each category by model divided by the unadjusted city/highway mile-per-gallon ratings for that model, developed by the Environmental Protection Agency (EPA) for each fiscal year. The EPA mile-per-gallon rating for each motor vehicle make, model, and model year may be obtained from the: General Services Administration, Attn: FFA, Washington, DC 20406.

(b) An example follows:

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

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

B. 150 Six cylinder automatic transmission mini-vans, EPA rating 24.8 mpg, plus

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

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

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

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

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

(a) You must submit your reasons for the exemption in a written request to the: Administrator of General Services, ATTN: MTV, Washington, DC 20405.

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

§ 102–34.70 How does GSA monitor the fuel economy of purchased and leased motor vehicles?

(a) Executive agencies report to GSA their leases and purchases of passenger automobiles and light trucks. GSA keeps a master record of the miles per gallon for passenger automobiles and light trucks acquired by each agency during the fiscal year. GSA verifies that each agency's passenger automobile and light truck leases and purchases achieve the fleet average fuel economy for the applicable fiscal year, as required by Executive Order 12375.

(b) The GSA Federal Vehicle Policy Division (MTV) issues information about the EPA miles-per-gallon ratings to executive agencies at the beginning of each fiscal year to help agencies with their acquisition plans.

§ 102–34.75 How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease?

(a) You must send copies or synopses of motor vehicle leases and purchases to GSA. Use the unadjusted combined city/highway mile-per-gallon ratings for passenger automobiles and light trucks developed each fiscal year by the Environmental Protection Agency (EPA). All submissions for a fiscal year must reach GSA by December 1 of the next fiscal year. Submit the information as soon as possible after the purchase or effective date of each lease to the: General Services Administration, ATTN: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*.

(b) Include in your submission to GSA motor vehicles purchased or leased by your agency for use in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(c) Your submission to GSA must include:

(1) Number of passenger automobiles and light trucks, by category.

(2) Year.

(3) Make.

(4) Model.

(5) Transmission type (if manual, number of forward speeds).

(6) Cubic inch displacement of engine.

(7) Fuel type (i.e., gasoline, diesel, or type of alternative fuel).

(8) Monthly lease cost, if applicable.

NOTE TO §102-34.75: Do not include passenger automobile and light truck lease renewal options as new acquisition motor vehicle leases. Do not report passenger automobiles and light trucks exempted from fleet

Federal Management Regulation

§ 102-34.115

average fuel economy standards (see §102-34.50(b) and §102-34.65).

§ 102-34.80 Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division?

No. The GSA Automotive Division provides information for passenger automobiles and light trucks it purchases for agencies.

§ 102-34.85 Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year?

Yes, you must submit a negative report if you don't purchase or lease any motor vehicles in a fiscal year.

§ 102-34.90 Are any motor vehicles exempted from these reporting requirements?

Yes. You do not need to report passenger automobiles and light trucks that are:

- (a) Purchased or leased for use outside any State, Commonwealth, territory or possession of the United States, or the District of Columbia.
- (b) Designed to perform combat-related missions for the U.S. Armed Forces.
- (c) Designed for use in law enforcement or emergency rescue work.

§ 102-34.95 Does fleet average fuel economy reporting affect our acquisition plan?

It may. If previous motor vehicle purchases and leases have caused your fleet to fail to meet the required fuel economy by the end of the fiscal year, GSA may encourage you to adjust future requests to meet fuel economy requirements.

§ 102-34.100 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plan, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

Subpart B—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

§ 102-34.105 What motor vehicles require motor vehicle identification?

All motor vehicles owned or leased by the Government must display motor vehicle identification unless exempted under §102-34.180, §102-34.195, or §102-34.200.

§ 102-34.110 What motor vehicle identification must we put on motor vehicles we purchase or lease?

(a) For motor vehicles with rear windows, display:

(1) "For Official Use Only," in letters $\frac{1}{2}$ to $\frac{3}{4}$ inch high.

(2) "U.S. Government" in letters $\frac{3}{4}$ to 1 inch high; and

(3) The full name of the department, agency, establishment, corporation, or service owning or leasing the motor vehicle (in letters 1 to 1½ inch high), or in the alternative, a title that describes the activity in which it is operated (if the title readily identifies the department, agency, establishment, corporation, or service concerned).

(b) For other than motor vehicle rear windows, display the motor vehicle identification in paragraphs (a)(1) through (3) of this section, but:

(1) Use letters 1 to 1½ inches high in colors contrasting to the motor vehicle.

(2) If you use subsidiary words or titles of subordinate units, use letters $\frac{1}{2}$ inch to $\frac{3}{4}$ inch high.

(c) The preferred material is a decal of elastomeric pigmented film type for ease of application and removal.

NOTE TO §102-34.110: Each agency or activity is responsible for acquiring its own decals. Replace this motor vehicle identification when necessary due to damage or wear.

§ 102-34.115 What motor vehicle identification must the Department of Defense (DOD) put on motor vehicles it purchases or leases?

The following must appear on DOD purchased or leased motor vehicles:

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

§ 102-34.120

(c) The DOD code and registration number assigned by the DOD component accountable for the motor vehicle.

§ 102-34.120 Where is motor vehicle identification placed on purchased and leased motor vehicles?

(a) *On most motor vehicles.* On the left side of the rear window, 1½ inches or less from the bottom of the window.

(b) *On motor vehicles without rear windows or where identification on the rear window would not be easily seen.* Centered on both front doors or in any appropriate position on each side of the motor vehicle.

(c) *On trailers.* Centered on both sides of the front quarter of the trailer in a conspicuous location.

§ 102-34.125 Before we sell a motor vehicle, what motor vehicle identification or markings must we remove?

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

LICENSE PLATES

§ 102-34.130 Must our motor vehicles use Government license plates?

Yes you must use Government license plates, with the exception of motor vehicles exempted under § 102-34.180, § 102-34.195, and § 102-34.200.

§ 102-34.135 Do we need to register motor vehicles owned or leased by the Government?

For a motor vehicle owned or leased by the Government that is regularly based or operated outside the District of Columbia and displaying U.S. Government license plates and motor vehicle identification, you need not register it in a State, Commonwealth, territory or possession of the United States. Motor vehicles exempted under § 102-34.180, § 102-34.195, or § 102-34.200 must be registered and inspected in accordance with the laws of the State, Commonwealth, territory or possession of the United States where the motor vehicle is regularly operated.

§ 102-34.140 Where may we obtain U.S. Government license plates?

For detailed instructions and an ordering form to obtain U.S. Government license plates, contact the: Super-

41 CFR Ch. 102 (7-1-02 Edition)

intendent of Industries, District of Columbia, Department of Corrections, Lorton, VA 22079.

NOTE TO § 102-34.140: You may, but are not required to obtain license plates from the District of Columbia, Department of Corrections.

§ 102-34.145 How do we display license plates on motor vehicles?

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

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

(c) Display the U.S. Government license plates until the motor vehicle is removed from Government service or is transferred, or until the plates are damaged and require replacement.

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

§ 102-34.150 What do we do about a lost or stolen license plate?

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

(a) *U.S. Government license plates.* Tell your local security office (or equivalent) and local police.

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

§ 102-34.155 What records do we need to keep on U.S. Government license plates?

You must keep a central record of all U.S. Government license plates for your agency's motor vehicle purchases and motor vehicle leases. The GSA Fleet must keep such a record for GSA Fleet vehicles. The record must identify:

(a) The motor vehicle to which each set of plates is assigned.

(b) The complete history of any reassigned plates.

(c) A list of destroyed or voided license plate numbers.

Federal Management Regulation

§ 102-34.170

§ 102-34.160 How are U.S. Government license plates coded and numbered?

U.S. Government license plates, except those issued by the District of Columbia, Department of Transportation, under § 102-34.170, will be numbered serially for each executive agency, beginning with 101, and preceded by a letter code that designates the owning agency for the motor vehicle as follows:

Agriculture, Department of—A
Air Force, Department of the—AF
Army, Department of the—W
Commerce, Department of—C
Consumer Product Safety Commission—CPSC
Corps of Engineers, Civil Works—CE
Defense, Department of—D
Defense Commissary Agency—DECA
Defense Contract Audit Agency—DA
Defense Logistics Agency—DLA
District of Columbia Redevelopment Land Agency—LA
Energy, Department of—E
Enrichment Corporation, U.S.—EC
Environmental Protection Agency—EPA
Executive Office of the President—EO Council of Economic Advisers, National Security Council, Office of Management and Budget—EO
Federal Communications Commission—FC
Federal Deposit Insurance Corporation—FD
Federal Emergency Management Agency—FE
Federal Mediation and Conciliation Service—FM
General Services Administration—GS
Government Printing Office—GP
GSA Fleet—G
Health and Human Services, Department of—HHS
Interior, Department of the—I
Judicial Branch of the Government—JB
Justice, Department of—J
Labor, Department of—L
Legislative Branch—LB
Marine Corps—MC
National Aeronautics and Space Administration—NA
National Capital Planning Commission—NP
National Guard Bureau—NG
National Labor Relations Board—NL
National Science Foundation—NS
Navy, Department of the—N
Nuclear Regulatory Commission—NRC
Office of Personnel Management—OPM
Panama Canal Commission—PC
Railroad Retirement Board—RR
Selective Service System—SS
Small Business Administration—SB
Smithsonian Institution, National Gallery of Art—SI
Soldiers' and Airmen's Home, U.S.—SH
State, Department of—S
Tennessee Valley Authority—TV

Transportation, Department of—DOT
Treasury, Department of the—T
United States Information Agency—IA
United States Postal Service—P
Veterans Affairs, Department of—VA

§ 102-34.165 How can we get a new license plate code designation?

To get a new license plate code designation, write to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

§ 102-34.170 Are there special licensing procedures for motor vehicles operating in the District of Columbia (DC)?

Yes. DC Code, section 40-102(d)(2), requires the issuance of license plates, without charge, for all motor vehicles owned or leased by the Government at the time the motor vehicle is registered or reregistered.

(a) You must register motor vehicles that are regularly based or operated in DC with the DC Department of Transportation. Your application to register must include a manufacturer's Certificate of Origin, bill of sale, or other document attesting Government ownership. Forms for registering motor vehicles are available from the District of Columbia, Department of Transportation.

(b) Motor vehicles owned or leased by the Government and licensed in the District of Columbia may have the letter code designation prescribed in § 102-34.160 stenciled in the blank space beside the embossed numbers. If you add a letter code designation, stencil it on the license plate so that the letters resemble the embossed numbers in size and color. License plates issued by the District of Columbia without an agency letter code designation will usually have the letter code designation "US".

(c) Transfer of U.S. Government license plates issued by the District of Columbia between your agency's own motor vehicles requires prior approval from the District of Columbia, Department of Transportation.

(d) You must have each registered motor vehicle inspected annually according to section 40-204 of the District of Columbia Code and applicable regulations. The District of Columbia

§ 102-34.175

issues an inspection verification sticker for each motor vehicle that passes inspection. Inspections and stickers are free.

(e) Return damaged or mutilated license plates to the District of Columbia, Department of Transportation, for cancellation. Also return license plates when you transfer a motor vehicle regularly based or operated in the District of Columbia to operation in a field area, another agency, or remove the motor vehicle from Government service.

[64 FR 59593, Nov. 2, 1999; 64 FR 66967, Nov. 30, 2000]

IDENTIFICATION EXEMPTIONS

§ 102-34.175 What types of exemptions are there?

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

§ 102-34.180 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

Yes. The head of your agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification. (See § 102-34.185.) For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, Attn: FFF, Washington, DC 20406.

NOTE TO § 102-34.180: Not eligible for exemption are motor vehicles regularly used for common administrative purposes and not directly connected to investigative, law enforcement or intelligence duties involving security activities.

§ 102-34.185 What information must the certification contain?

The certification must state either:

- (a) That the motor vehicle is used primarily for investigative, law enforcement or intelligence duties involving security activities and that identifying the motor vehicle would interfere with those duties; or
- (b) That identifying the motor vehicle would endanger the security of the vehicle occupants.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-34.190 For how long is a limited exemption valid?

An exemption granted in accordance with § 102-34.180 and § 102-34.185 may last from one day up to one year. If the requirement for exemption still exists at the end of the year, your agency must re-certify the continued exemption. For a motor vehicle leased from the GSA Fleet, send a copy of the re-certification to the: General Services Administration, ATTN: FFF, Washington, DC 20406.

§ 102-34.195 What agencies have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

The following Federal agencies, or activities within agencies, are granted an unlimited exemption based on ongoing mission requirements and do not need to certify:

(a) *Administrative Office of the United States Courts.* All motor vehicles used by United States probation offices and pretrial services agencies of the judicial branch of the U.S. Government.

(b) *Department of Agriculture.* Motor vehicles used for investigative or law enforcement activities by the Agricultural Marketing Service, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, Forest Service, Grain Inspection, Packers and Stockyard Administration, Packers and Stockyard Program, Food and Consumers Service, and Office of the Inspector General.

(c) *Department of Commerce.* Motor vehicles used for surveillance and other law enforcement activities by the Office of Export Enforcement, International Trade Administration, the National Marine Fisheries Service, and the National Oceanic and Atmospheric Administration.

(d) *Department of Defense.* Motor vehicles used for intelligence, investigative, or security activities by the U.S. Army Intelligence Agency and the Criminal Investigation Command of the Department of the Army; Office of Naval Intelligence of the Department of the Navy; Office of Special Investigations of the Department of the Air Force; the Defense Criminal Investigation Service, Office of the Inspector

Federal Management Regulation

§ 102-34.195

General; and the Defense Logistics Agency.

(e) *District of Columbia*. Motor vehicles used by St. Elizabeth's Hospital in outpatient work where identifying the motor vehicles would be prejudicial to patients.

(f) *Department of Education*. Motor vehicles used for investigative and law enforcement activities by the Office of the Inspector General.

(g) *Department of Energy*. Motor vehicles used for investigative or security activities.

(h) *Environmental Protection Agency*. Motor vehicles used for investigative and law enforcement activities by the Office of Inspector General and the Office of Enforcement and Compliance Assurance.

(i) *Federal Communications Commission*. Motor vehicles used for investigative activities by the Field Operations Bureau.

(j) *General Services Administration*. Motor vehicles used for investigative, surveillance, and security activities by special agents of the Federal Protective Service, and Office of the Inspector General.

(k) *Department of Health and Human Services*. Motor vehicles used for undercover law enforcement and similar investigative work by the Food and Drug Administration; motor vehicles used to transport mentally disturbed children by the National Institutes of Health; and motor vehicles used for law enforcement and investigative purposes by the Office of Investigations and the Office of the Inspector General.

(l) *Department of Housing and Urban Development*. Motor vehicles used for law enforcement or investigative purposes by the Office of the Inspector General.

(m) *Department of the Interior*. Motor vehicles used to enforce game laws by the U.S. Fish and Wildlife Service; motor vehicles assigned to special agents of the Bureau of Land Management who investigate crimes against public lands; motor vehicles assigned to special officers of the Bureau of Indian Affairs; motor vehicles used for investigating crimes against public lands by the National Park Service and assigned to the U.S. Park Police; and motor vehicles assigned to the special

agents of the Office of the Inspector General who investigate possible crimes of fraud and abuse by departmental employees, contractors, and grantees.

(n) *Department of Justice*. All motor vehicles used for undercover law enforcement activities or investigative work by the Department.

(o) *Department of Labor*. All motor vehicles used for investigative, law enforcement, and compliance activities by the Employment and Training Administration, Occupational Safety and Health Administration, Employment Standards Administration, and the Mine Safety and Health Administration.

(p) *National Aeronautics and Space Administration*. Motor vehicles used for investigative or law enforcement activities.

(q) *National Labor Relations Board*. Motor vehicles used for investigative activities by field offices.

(r) *National Security Council*. Motor vehicles used by the Central Intelligence Agency.

(s) *Nuclear Regulatory Commission*. Motor vehicles used for the conduct of security operations or in the enforcement of security regulations.

(t) *Office of Personnel Management*. Motor vehicles used for the investigative program of the Office of Personnel Investigations and regional investigation activities.

(u) *United States Postal Service*. Motor vehicles that the Postal Inspection Service uses for investigative and law enforcement activities.

(v) *Department of State*. Motor vehicles used for protecting domestic and foreign dignitaries and investigating passport and visa fraud.

(w) *Department of Transportation*. Motor vehicles used for intelligence, investigative, or security activities by the Office of the Inspector General, the OST Office of Security, the Investigations and Security Division and field counterparts in the U.S. Coast Guard, the Office of Civil Aviation Security and field counterparts in the Federal Aviation Administration, and the Idaho Division Office of Motor Carriers in the Federal Highway Administration.

§ 102-34.200

(x) *Department of Treasury.* Motor vehicles used by the U.S. Secret Service; the Criminal Investigation Division and the Internal Security Division of the Internal Revenue Service; motor vehicles used for investigative activities by the Collection Division of the Internal Revenue Service; motor vehicles used by the Office of Enforcement and the Office of Inspection at the Bureau of Alcohol, Tobacco, and Firearms; and motor vehicles used by the Office of Enforcement, Office of Compliance Operations, and the Office of Internal Affairs at the U.S. Customs Service.

(y) *Department of Veterans Affairs.* Motor vehicles used for investigative activities by the Office of the Inspector General and regional Field Examiners and Property Management Inspectors.

§ 102-34.200 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 are exempt from the requirement to display motor vehicle identification. All motor vehicles, other than those assigned for the personal use of the President, will display official U.S. Government license plates.

§ 102-34.205 What license plates and motor vehicle identification do we use on motor vehicles that are exempt from motor vehicle identification and U.S. Government license plates?

Display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated.

§ 102-34.210 What special requirements apply to exempted motor vehicles operating in the District of Columbia?

If your agency wants to use regular District of Columbia license plates for motor vehicles exempt from displaying U.S. government license plates and motor vehicle identification, your agency head must designate an official to authorize them. Provide the name and facsimile signature of that official

41 CFR Ch. 102 (7-1-02 Edition)

to the District of Columbia, Department of Transportation, annually.

§ 102-34.215 Can GSA ask for a listing of exempted motor vehicles?

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

Subpart C—Official Use of Government Motor Vehicles

§ 102-34.220 What is official use of a motor vehicle owned or leased by the Government?

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

§ 102-34.225 May I use a motor vehicle owned or leased by the Government for transportation between my residence and place of employment?

No, you may not use a Government motor vehicle for transportation between your residence and place of employment unless your agency authorizes such use after making the necessary determination under 31 U.S.C. 1344 and subpart 101-6.4 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102-34.230 May Government contractors use motor vehicles owned or leased by the Government?

Yes, Government contractors may use Government motor vehicles when authorized under applicable procedures and the following conditions:

(a) Motor vehicles are used for official purposes only and solely in the performance of the contract.

(b) Motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and subpart 101-6.4 of this title.

(c) Contractors must:

Federal Management Regulation

§ 102-34.275

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

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

§ 102-34.235 What does GSA do if it learns of unofficial use of a motor vehicle owned or leased by the Government?

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

§ 102-34.240 How are Federal employees disciplined for misuse of motor vehicles owned or leased by the Government?

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

§ 102-34.245 How am I responsible for protecting motor vehicles?

When a Government-owned or -leased motor vehicle is under your control, you must:

(a) Park or store the vehicle in a manner that reasonably protects it from theft or damage.

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

§ 102-34.250 Am I bound by State and local traffic laws?

Yes. You must obey all motor vehicle traffic laws of the State and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate State or local traffic laws. If you are fined or otherwise penalized for an of-

fense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102-34.255 Who pays for parking fees and fines?

You must pay parking fees while operating a motor vehicle owned or leased by the Government. However, you can expect to be reimbursed for parking fees incurred while performing official duties. Conversely, if you are fined for a parking violation while operating a motor vehicle owned or leased by the Government, payment is your personal responsibility and you will not be reimbursed.

§ 102-34.260 Do Federal employees in motor vehicles owned or leased by the government have to use safety belts?

Yes Federal employees must use safety belts, when there is a safety belt.

Subpart D—Replacement of Motor Vehicles

§ 102-34.265 What are motor vehicle replacement standards?

Motor vehicle replacement standards specify the minimum number of years in use or miles traveled at which an executive agency may replace a Government-owned motor vehicle (see § 102-34.280).

§ 102-34.270 May we replace a Government-owned motor vehicle sooner?

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

§ 102-34.275 May we keep a Government-owned motor vehicle even though the standard permits replacement?

Yes. The replacement standard is a minimum only, and therefore, you may

§ 102-34.280

keep a Government-owned motor vehicle longer than shown in § 102-34.280 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102-34.280 How long must we keep a Government-owned motor vehicle?

You must keep a motor vehicle owned or leased by the Government for at least the years or miles shown in the following table:

TABLE OF MINIMUM REPLACEMENT STANDARDS

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

^aMinimum standards are stated in both years and miles; use whichever occurs first.

Subpart E—Scheduled Maintenance of Motor Vehicles

§ 102-34.285 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease. This requirement applies to motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

- Meet Federal, State, and local emission standards;
- Meet manufacturer warranty requirements;
- Ensure the safe and economical operating condition of the motor vehicle throughout its life; and
- Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102-34.290 Must our motor vehicles pass State inspections?

Yes your motor vehicles must pass State inspections, where mandated.

41 CFR Ch. 102 (7-1-02 Edition)

(a) Each motor vehicle owned or leased by the Government must pass Federally-mandated emission inspections in the jurisdictions in which they operate when required by State motor vehicle administrations or State environmental departments. You must reimburse State activities for the cost of these inspections if the fee is not waived. GSA will pay the cost of these inspections for motor vehicles leased from the GSA Fleet.

(b) Motor vehicles owned or leased by the Government that are exempted from the display of U.S. Government license plates and motor vehicle identification must comply with emission and mechanical inspection programs of the State, Commonwealth, territory or possession of the United States or the District of Columbia in which they are regularly operated. Your agency must pay for these inspections, unless the fee is waived. Payment for these inspections for motor vehicles leased from the GSA Fleet are the responsibility of the using agency.

§ 102-34.295 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance programs, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

Subpart F—Motor Vehicle Accident Reporting

§ 102-34.300 What forms do I use to report an accident involving a motor vehicle owned or leased by the Government?

GSA recommends the following forms for use to report an accident in any State, Commonwealth, territory or possession of the United States and the District of Columbia. The forms should be carried in any motor vehicle owned or leased by the Government.

- Standard Form 91, Motor Vehicle Accident Report.* The motor vehicle operator should complete this form at the time and scene of the accident if possible, even if damage to the motor vehicle is not noticeable.

Federal Management Regulation

§ 102-34.330

(b) *Standard Form 94, Statement of Witness*. This form should be completed by any witness to the accident.

§ 102-34.305 To whom do we send accident reports?

Send accident reports as follows:

(a) If the motor vehicle is owned or leased by your agency, follow your internal agency directives.

(b) If the motor vehicle is managed by the GSA Fleet, report the accident to GSA in accordance with subpart 101-39.4 of this title.

Subpart G—Disposal of Motor Vehicles

§ 102-34.310 How do we dispose of a motor vehicle in any State, Commonwealth, territory or possession of the United States, or the District of Columbia?

After meeting the replacement standards under subpart D of this part, you may dispose of a Government-owned motor vehicle by transferring the motor vehicle title, or manufacturer's Certificate of Origin, to the new owner. Detailed instructions on the disposal process are in parts 101-45 and 101-46 of this title.

§ 102-34.315 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

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

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

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

NOTE TO § 102-34.315(a)(2): Do not use Standard Form 97 if the Government-owned motor vehicle is either not designed or not legal for operation on highways. Examples are construction equipment, farm machinery, and certain military-design motor vehicles. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip-Sale of Government Personal Property, and Standard Form 114, Sale of Government Property—Bid and Award.

(b) Standard Form 97 is optional in foreign countries because foreign governments may require the use of other forms.

NOTE TO § 102-34.315: The original Standard Form 97 is printed on secure paper to identify readily any attempt to alter the form. The form is also pre-numbered to prevent duplicates. State motor vehicle agencies may reject certificates showing erasures or strikeovers.

§ 102-34.320 How do we distribute the completed Standard Form 97?

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

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

(b) One copy to the owning agency.

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

(d) One copy under owning-agency directives.

Subpart H—Motor Vehicle Fueling

§ 102-34.325 How do we obtain fuel for motor vehicles?

You may obtain fuel for any motor vehicle owned or leased by the Government by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency.

§ 102-34.330 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?

(a) You may use a fleet charge card specifically issued for this purpose. These cards are designed to collect motor vehicle data at the time of purchase. Where appropriate, State sales and motor fuel taxes are deducted from fuel purchases by the fleet charge card services contractor before your agency is billed. The GSA contractor issued fleet charge card is the only Government-issued charge card that may be used for GSA Fleet motor vehicles. For further information on acquiring these fleet charge cards and their use, contact the: General Services Administration, Attn: FCX, Washington, DC 20406.

§ 102-34.335

(b) You may use a Government purchase card if you do not have a fleet charge card or if the use of such a government purchase card is required by your agency mission. However, the Government purchase card does not collect motor vehicle data nor does it deduct State sales and motor fuel taxes.

§ 102-34.335 What type of fuel do I use in motor vehicles?

(a) Use the grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling motor vehicles owned or leased by the Government.

(b) Do not use premium grade gasoline in any motor vehicle owned or leased by the Government unless the motor vehicle specifically requires premium grade gasoline.

(c) Use unleaded gasoline in all Government owned or leased motor vehicles designed to operate on gasoline and used overseas unless:

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

(2) Such gasoline is not available locally.

§ 102-34.340 Do I have to use self-service fuel pumps?

Yes. You must use self-service fuel pumps to the fullest extent possible.

Subpart I—Federal Motor Vehicle Fleet Report

§ 102-34.345 What is the Federal Motor Vehicle Fleet Report?

The Federal Motor Vehicle Fleet Report is compiled by GSA annually from information submitted by Federal agencies on motor vehicle inventory, cost, and use data. GSA supplies copies of the report to the Congress, Federal agencies, and other organizations upon request.

Recipients of this report use it to evaluate and analyze operations and management of the Federal motor vehicle fleet.

§ 102-34.350 What records do we need to keep?

For owned motor vehicles, you are responsible for developing adequate ac-

41 CFR Ch. 102 (7-1-02 Edition)

counting and reporting procedures to ensure accurate reporting of inventory, cost, and operational data needed to manage and control motor vehicles.

§ 102-34.355 When and how do we report motor vehicle data?

(a) Within 75 calendar days after the end of the fiscal year, use Standard Form 82, Agency Report of Motor Vehicle Data, to report motor vehicle inventory, cost, and operating information. Send the Standard Form 82 to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

(b) Use separate forms to report data for domestic and foreign fleets.

(1) For motor vehicles lent to another agency during the reporting period, the owning agency reports all data.

(2) For motor vehicles transferred from one owning agency to another, each agency reports data for the time it retained accountability.

(c) Detailed instructions are included as part of the form. You can also complete the Standard Form 82 electronically using a computerized input medium. For further information, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

Subpart J—Forms

§ 102-34.360 How do we obtain the forms prescribed in this part?

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

PART 102-35—DISPOSITION OF PERSONAL PROPERTY [RESERVED]

PART 102-36—DISPOSITION OF EXCESS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

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

102-36.10 What does this part cover?

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

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

Federal Management Regulation

Pt. 102-36

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

102-36.30 When is personal property excess?

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

DEFINITIONS

102-36.40 What definitions apply to this part?

RESPONSIBILITY

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

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

102-36.55 What is GSA's role in the disposition of excess personal property?

Subpart B—Acquiring Excess Personal Property For Our Agency

ACQUIRING EXCESS

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

102-36.65 Why must we use excess personal property instead of buying new property?

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

102-36.75 Do we pay for excess personal property we acquire from another Federal agency under a transfer?

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

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

SCREENING OF EXCESS

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

102-36.95 How long is excess personal property available for screening?

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

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

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

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

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

PROCESSING TRANSFERS

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

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

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

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

DIRECT TRANSFERS

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

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

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

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

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

NONAPPROPRIATED FUND ACTIVITIES

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

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

CONTRACTORS

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

COOPERATIVES

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

PROJECT GRANTEES

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

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

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

Pt. 102-36

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

102-36.205 Is there a limit to how much excess personal property we may furnish to our grantees?

Subpart D—Disposition of Excess Personal Property

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

REPORTING EXCESS PERSONAL PROPERTY

102-36.215 How do we report excess personal property?

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

102-36.225 Must we report excess related personal property?

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

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

102-36.240 What are the disposal condition codes?

DISPOSING OF EXCESS PERSONAL PROPERTY

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

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

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

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

102-36.265 What if there are competing requests for the same excess personal property?

102-36.270 What if a Federal agency requests personal property that is undergoing donation screening or in the sales process?

102-36.275 May we dispose of excess personal property without GSA approval?

102-36.280 May we withdraw from the disposal process excess personal property that we have reported to GSA?

TRANSFERS WITH REIMBURSEMENT

102-36.285 May we charge for personal property transferred to another Federal agency?

102-36.290 How much do we charge for excess personal property on a transfer with reimbursement?

REPORT OF DISPOSAL ACTIVITY

102-36.295 Is there any reporting requirement on the disposition of excess personal property?

41 CFR Ch. 102 (7-1-02 Edition)

102-36.300 How do we report the furnishing of personal property to non-Federal recipients?

ABANDONMENT/DESTRUCTION

102-36.305 May we abandon or destroy excess personal property without reporting it to GSA?

102-36.310 Who makes the determination to abandon or destroy excess personal property?

102-36.315 Are there any restrictions to the use of the abandonment/destruction authority?

102-36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?

102-36.325 What must be done before the abandonment/destruction of excess personal property?

102-36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?

Subpart E—Personal Property Whose Disposal Requires Special Handling

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

AIRCRAFT AND AIRCRAFT PARTS

102-36.340 What must we do when disposing of excess aircraft?

102-36.345 May we dispose of excess Flight Safety Critical Aircraft Parts (FSCAP)?

102-36.350 How do we identify a FSCAP?

102-36.355 What are the FSCAP Criticality Codes?

102-36.360 How do we dispose of aircraft parts that are life-limited but have no FSCAP designation?

CANINES, LAW ENFORCEMENT

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

DISASTER RELIEF PROPERTY

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

FIREARMS

102-36.375 May we dispose of excess firearms?

FOREIGN EXCESS PERSONAL PROPERTY

102-36.380 Who is responsible for disposing of foreign excess personal property?

102-36.385 What are our responsibilities in the disposal of foreign excess personal property?

Federal Management Regulation

§ 102-36.25

- 102-36.390 How may we dispose of foreign excess personal property?
- 102-36.395 How may GSA assist us in disposing of foreign excess personal property?
- 102-36.400 Who pays for the transportation costs when foreign excess personal property is returned to the United States?

GIFTS

- 102-36.405 May we keep gifts given to us from the public?
- 102-36.410 How do we dispose of a gift in the form of money or intangible personal property?
- 102-36.415 How do we dispose of gifts other than intangible personal property?
- 102-36.420 How do we dispose of gifts from foreign governments or entities?

HAZARDOUS PERSONAL PROPERTY

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

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

- 102-36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?
- 102-36.435 How do we identify Munitions List Items (MLIs)/Commerce Control List Items (CCLIs) requiring demilitarization?

PRINTING EQUIPMENT AND SUPPLIES

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

RED CROSS PROPERTY

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

SHELF-LIFE ITEMS

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

VESSELS

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

Subpart F—Miscellaneous Disposition

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

AUTHORITY: 40 U.S.C. 486(c).

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

Subpart A—General Provisions

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

Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act) (40 U.S.C. 486), authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under the Property Act. Section 202 of the Property Act (40 U.S.C. 483) authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

§ 102-36.10 What does this part cover?

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

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

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

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

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

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

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

§ 102-36.30

§ 102-36.30 When is personal property excess?

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

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

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

(b) If GSA determines that there are no Federal requirements for your excess personal property, it becomes surplus property and is available for donation to State and local public agencies and other eligible non-Federal activities. The Property Act requires that surplus personal property be distributed to eligible recipients by an agency established by each State for this purpose, the State Agency for Surplus Property.

(c) Surplus personal property not selected for donation is offered for sale to the public by competitive offerings such as sealed bid sales, spot bid sales or auctions. You may conduct or contract for the sale of your surplus personal property, or have GSA or another executive agency conduct the sale on behalf of your agency in accordance with part 101-45 of this title. You must inform GSA at the time the property is reported as excess if you do not want GSA to conduct the sale for you.

(d) If a written determination is made that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its

41 CFR Ch. 102 (7-1-02 Edition)

sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies.

DEFINITIONS

§ 102-36.40 What definitions apply to this part?

The following definitions apply to this part:

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

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

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

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

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

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

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

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

Exchange/sale property means property not excess to the needs of the holding agency but eligible for replacement, which is exchanged or sold under the provisions of part 101-46 of this title in order to apply the exchange allowance or proceeds of sale in whole or part payment for replacement with a similar item.

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

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

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

Federal Disposal System (FEDS) is GSA's automated excess personal property system. For additional information on using FEDS, access <http://pub.fss.gsa.gov/property/>.

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

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

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

during the performance of the contemplated activity.

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

Holding agency means the Federal agency having accountability for, and generally possession of, the property involved.

Intangible personal property means personal property in which the existence and value of the property is generally represented by a descriptive document rather than the property itself. Some examples are patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, and shares of stock.

Life-limited aircraft part is an aircraft part that has a finite service life expressed in either total operating hours, total cycles, and/or calendar time.

Line item means a single line entry, on a reporting form or transfer order, for items of property of the same type having the same description, condition code, and unit cost.

Munitions List Items (MLIs) are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State.

Nonappropriated fund activity means an activity or entity that is not funded by money appropriated from the general fund of the U.S. Treasury, such as post exchanges, ship stores, military officers' clubs, veterans' canteens, and similar activities. Such property is not Federal property.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

Project grant means a grant made for a specific purpose and with a specific termination date.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 386), as amended.

Public agency means any State, political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multi-jurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Related personal property means any personal property that is an integral part of real property. It is:

(1) Related to, designed for, or specifically adapted to the functional capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property; or

(2) Determined by the Administrator of General Services to be related to the real property.

Salvage means property that has value greater than its basic material content but for which repair or rehabilitation is clearly impractical and/or uneconomical.

Scrap means property that has no value except for its basic material content.

Screening period means the period in which excess and surplus personal property are made available for excess transfer or surplus donation to eligible recipients.

Shelf-life item is any item that deteriorates over time or has unstable characteristics such that a storage period must be assigned to assure the item is issued within that period to provide satisfactory performance. Management of such items is governed by part 101-27, subpart 27.2, of this title and by DOD instructions, for executive agencies and DOD respectively.

Surplus personal property (surplus) means excess personal property no longer required by the Federal agencies as determined by GSA.

Surplus release date means the date when Federal screening has been completed and the excess property becomes surplus.

Transfer with reimbursement means a transfer of excess personal property between Federal agencies where the recipient is required to pay, i.e. reimburse the holding agency, for the property.

Unit cost means the original acquisition cost of a single item of property.

United States means all the 50 States and the District of Columbia.

Vessels means ships, boats and craft designed for navigation in and on the water, propelled by oars or paddles, sail, or power.

RESPONSIBILITY

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

(a) Agency procurement policies should require consideration of excess personal property before authorizing procurement of new personal property.

(b) You are encouraged to designate national and regional property management officials to:

(1) Promote the use of available excess personal property to the maximum extent practicable by your agency.

(2) Review and approve the acquisition and disposal of excess personal property.

(3) Ensure that any agency implementing procedures comply with this part.

(c) When acquiring excess personal property, you must:

(1) Limit the quantity acquired to that which is needed to adequately perform the function necessary to support the mission of your agency.

(2) Establish controls over the processing of excess personal property transfer orders.

(3) Facilitate the timely pickup of acquired excess personal property from the holding agency.

(d) While excess personal property you have acquired is in your custody, or the custody of your non-Federal recipients and the Government retains title, you and/or the non-Federal recipient must do the following:

(1) Establish and maintain a system for property accountability.

(2) Protect the property against hazards including but not limited to fire, theft, vandalism, and weather.

Federal Management Regulation

§ 102-36.65

(3) Perform the care and handling of personal property. “Care and handling” includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting excess and surplus personal property, and destroying or rendering innocuous property which is dangerous to public health or safety.

(4) Maintain appropriate inventory levels as set forth in part 101-27 of this title.

(5) Continuously monitor the personal property under your control to assure maximum use, and develop and maintain a system to prevent and detect nonuse, improper use, unauthorized disposal or destruction of personal property.

(e) When you no longer need personal property to carry out the mission of your program, you must:

(1) Offer the property for reassignment to other activities within your agency.

(2) Promptly report excess personal property to GSA when it is no longer needed by any activity within your agency for further reuse by eligible recipients.

(3) Continue the care and handling of excess personal property while it goes through the disposal process.

(4) Facilitate the timely transfer of excess personal property to other Federal agencies or authorized eligible recipients.

(5) Provide reasonable access to authorized personnel for inspection and removal of excess personal property.

(6) Ensure that final disposition complies with applicable environmental, health, safety and national security regulations.

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

Yes, you may use service contracts to perform disposal functions that are not inherently Governmental, such as warehousing or custodial duties. You are responsible for ensuring that the contractor conforms with the requirements of the Property Act and the Federal Management Regulation (41 CFR chapter 102), and any other applicable

statutes and regulations when performing these functions.

§ 102-36.55 What is GSA’s role in the disposition of excess personal property?

In addition to developing and issuing regulations for the management of excess personal property, GSA:

(a) Screens and offers available excess personal property to Federal agencies and eligible non-Federal recipients.

(b) Approves and processes transfers of excess personal property to eligible activities.

(c) Determines the amount of reimbursement for transfers of excess personal property when appropriate.

(d) Conducts sales of surplus and exchange/sale personal property when requested by an agency.

(e) Maintains an automated system, FEDS, to facilitate the reporting and transferring of excess personal property.

Subpart B—Acquiring Excess Personal Property For Our Agency

ACQUIRING EXCESS

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

The following are eligible to acquire excess personal property:

(a) Federal agencies (for their own use or use by their authorized contractors, cooperatives, and project grantees).

(b) The Senate.

(c) The House of Representatives.

(d) The Architect of the Capitol and any activities under his direction.

(e) The DC Government.

(f) Mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

§ 102-36.65 Why must we use excess personal property instead of buying new property?

Using excess personal property to the maximum extent practicable maximizes the return on Government dollars spent and minimizes expenditures for new procurement. Before purchasing new property, check with the appropriate regional GSA Personal Property Management office or access

§ 102-36.70

FEDS for any available excess personal property that may be suitable for your needs. You must use excess personal property unless it would cause serious hardship, be impractical, or impair your operations.

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

Consider the following when acquiring excess personal property:

(a) There must be an authorized requirement.

(b) The cost of acquiring and maintaining the excess personal property (including packing, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new material.

(c) The sources of spare parts or repair/maintenance services to support the acquired item are readily accessible.

(d) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(e) The excess personal property will fulfill the required need with reasonable certainty without sacrificing mission or schedule.

(f) You must not acquire excess personal property with the intent to sell or trade for other assets.

§ 102-36.75 Do we pay for excess personal property we acquire from another Federal agency under a transfer?

(a) No, except for the situations listed in paragraph (b) of this section, you do not pay for the property. However, you are responsible for shipping and transportation costs. Where applicable, you may also be required to pay packing, loading, and any costs directly related to the dismantling of the property when required for the purpose of transporting the property.

(b) You may be required to reimburse the holding agency for excess personal property transferred to you (*i.e.*, transfer with reimbursement) when:

(1) Reimbursement is directed by GSA.

(2) The property was originally acquired with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or

41 CFR Ch. 102 (7-1-02 Edition)

other revenue and the holding agency requests reimbursement. It is executive branch policy that working capital fund property shall be transferred without reimbursement.

(3) The property was acquired with appropriated funds, but reimbursement is required or authorized by law.

(4) You or the holding agency is the U.S. Postal Service (USPS).

(5) You are acquiring excess personal property for use by a project grantee that is a public agency or a nonprofit organization and exempt from taxation under 26 U.S.C. 501.

(6) You or the holding agency is the DC Government.

(7) You or the holding agency is a wholly owned or mixed-ownership Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101-9110).

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

(a) You may be required to reimburse the holding agency the fair market value when the transfer involves any of the conditions in § 102-36.75(b)(1) through (b)(4).

(b) When acquiring excess personal property for your project grantees (§ 102-36.75(b)(5)), you are required to deposit into the miscellaneous receipts fund of the U.S. Treasury an amount equal to 25 percent of the original acquisition cost of the property, except for transfers under the conditions cited in § 102-36.190.

(c) When you or the holding agency is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102-36.75(b)(6) or (b)(7)), you are required to reimburse the holding agency using fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. Where circumstances warrant, a higher fair value may be used if the agencies concerned agree. Due to special circumstances or the unusual nature of the property, the holding agency may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional

Federal Management Regulation

§ 102-36.120

GSA Personal Property Management office.

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

Yes, you must pay for personal property disposed of under the exchange/sale authority, in the amount required by the holding agency. The amount of reimbursement is normally the fair market value.

SCREENING OF EXCESS

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

You may use the following methods to find out what excess personal property is available:

(a) Check GSA's automated excess personal property system FEDS. For information on FEDS access <http://pub.fss.gsa.gov/property/>.

(b) Contact or submit want lists to regional GSA Personal Property Management offices.

(c) Check any available holding agency websites (see <http://www.policyworks.gov/surplus> for a list of Federal agency websites.).

(d) Conduct on-site screening at various Federal facilities.

§ 102-36.95 How long is excess personal property available for screening?

The screening period for excess personal property is normally 21 calendar days. GSA may extend or shorten the screening period in coordination with the holding agency. For screening timeframes for Government property in the possession of contractors see the Federal Acquisition Regulation (48 CFR part 45).

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

Screening starts when GSA receives the report of excess personal property (see § 102-36.230).

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

You may authorize your agency employees, contractors, or non-Federal recipients that you sponsor to screen excess personal property. You may visit Defense Reutilization and Marketing Offices (DRMOs) and DOD contractor facilities to screen excess personal property generated by the Department of Defense. You may also inspect excess personal property at various civilian agency facilities throughout the United States.

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

(a) Yes, when entering a Federal facility, Federal agency employees must present a valid Federal ID. Non-Federal individuals will need proof of authorization from their sponsoring Federal agency in addition to a valid picture identification.

(b) Entry on some Federal and contractor facilities may require special authorization from that facility. Persons wishing to screen excess personal property on such a facility must obtain approval from that agency. Contact your regional GSA Personal Property Management office for locations and accessibility.

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

(a) For non-Federal persons to screen excess personal property, you must provide on the authorization form:

(1) The individual's name and the organization he/she represents;

(2) The period of time and location(s) in which screening will be conducted; and

(3) The number and completion date of the applicable contract, cooperative agreement, or grant.

(b) An authorized official of your agency must sign the authorization form.

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

You must do the following:

§ 102-36.125

(a) Ensure that the non-Federal screener certifies that any and all property requested will be used for authorized official purpose(s).

(b) Maintain a record of the authorized screeners under your authority, to include names, addresses and telephone numbers, and any additional identifying information such as driver's license or social security numbers.

(c) Retrieve any expired or invalid screener's authorization forms.

PROCESSING TRANSFERS

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

(a) You must first contact the appropriate regional GSA Personal Property Management office to assure the property is available to you. Submit your request on a SF 122, Transfer Order Excess Personal Property, to the region in which the property is located. For the types of property listed in the table in paragraph (b) of this section, submit the SF 122 to the corresponding GSA regions. You may submit the SF 122 manually or transmit the required information by electronic media (FEDS) or any other transfer form specified and approved by GSA.

(b) For the following types of property, you must submit the SF 122 to the corresponding GSA regions:

Type of property	GSA region	Location
Aircraft	9 FBP	San Francisco, CA 94102.
Firearms	7 FP-8	Denver, CO 80225.
Foreign Gifts	FBP	Washington, DC 20406.
Forfeited Property	3 FP	Washington, DC 20407.
Standard Forms ...	7 FMP	Ft. Worth, TX 76102.
Vessels, civilian ...	4 FD	Atlanta, GA 30365.
Vessels, DOD	3 FPD	Philadelphia, PA 19107.

[65 FR 31218, May 16, 2000; 65 FR 33889, May 25, 2000]

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

Whether the excess is for your use or for use by a non-Federal recipient that you sponsor, you must:

(a) Ensure that only authorized Federal officials of your agency sign the SF 122 prior to submission to GSA for approval.

41 CFR Ch. 102 (7-1-02 Edition)

(b) Ensure that excess personal property approved for transfer is used for authorized official purpose(s).

(c) Advise GSA of names of agency officials that are authorized to approve SF 122s, and notify GSA of any changes in signatory authority.

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

When the holding agency notifies you that the property is ready for removal, you normally have 15 calendar days to pick up the property, unless otherwise coordinated with the holding agency.

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

Yes, when the holding agency agrees to provide assistance in preparing the property for shipping. You may be required to pay the holding agency any direct costs in preparing the property for shipment. You must provide shipping instructions and the appropriate fund code for billing purposes on the SF 122.

DIRECT TRANSFERS

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

Yes, but only under the following situations:

(a) You may obtain excess personal property that has not yet been reported to GSA, provided the total acquisition cost of the excess property does not exceed \$10,000 per line item. You must ensure that a SF 122 is completed for the direct transfer and that an authorized official of your agency signs the SF 122. You must provide a copy of the SF 122 to the appropriate regional GSA office within 10 workdays from the date of the transaction.

(b) You may obtain excess personal property exceeding the \$10,000 per line item limitation, provided you first contact the appropriate regional GSA Personal Property Management office for verbal approval of a prearranged transfer. You must annotate the SF 122 with the name of the GSA approving official and the date of the verbal approval,

Federal Management Regulation

§ 102-36.170

and provide a copy of the SF 122 to GSA within 10 workdays from the date of transaction.

(c) You are subject to the requirement to pay reimbursement for the excess personal property under a direct transfer when any of the conditions in § 102-36.75(b) applies.

(d) You may obtain excess personal property directly from another Federal agency without GSA approval when that Federal agency has statutory authority to dispose of such excess personal property and you are an eligible recipient.

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

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

Under the Property Act you may acquire and furnish excess personal property for use by your nonappropriated fund activities, contractors, cooperatives, and project grantees. You may acquire and furnish excess personal property for use by other eligible recipients only when you have specific statutory authority to do so.

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

When acquiring excess personal property for use by a non-Federal recipient, your authorized agency official must:

(a) Ensure the use of excess personal property by the non-Federal recipient is authorized and complies with applicable Federal regulations and agency guidelines.

(b) Determine that the use of excess personal property will reduce the costs to the Government and/or that it is in the Government's best interest to furnish excess personal property.

(c) Review and approve transfer documents for excess personal property as the sponsoring Federal agency.

(d) Ensure the non-Federal recipient is aware of his obligations under the FMR and your agency regulations regarding the management of excess personal property.

(e) Ensure the non-Federal recipient does not stockpile the property but places the property into use within a reasonable period of time, and has a system to prevent nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished.

(f) Establish provisions and procedures for property accountability and disposition in situations when the Government retains title.

(g) Report annually to GSA excess personal property furnished to non-Federal recipients during the year (see § 102-36.295).

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

Annotate on the SF 122, the name of the non-Federal recipient and the contract, grant or agreement number, when applicable, and the scheduled completion/expiration date of the contract, grant or agreement. If the remaining time prior to the expiration date is less than 60 calendar days, you must certify that the contract, grant or agreement will be extended or renewed or provide other written justification for the transfer.

NONAPPROPRIATED FUND ACTIVITIES

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

Yes, title to excess personal property furnished to a nonappropriated fund activity remains with the Federal Government and you are accountable for establishing controls over the use of such excess property in accordance with § 102-36.45(d). When such property is no longer required by the nonappropriated fund activity, you must reuse or dispose of the property in accordance with this part.

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

Property purchased by a nonappropriated fund activity is not Federal property. A nonappropriated fund activity has the option of making its

§ 102-36.175

privately owned personal property available for transfer to a Federal agency, usually with reimbursement. If such reimbursable personal property is not transferred to another Federal agency, it may be offered for sale. Such property is not available for donation.

[65 FR 31218, May 16, 2000, as amended at 65 FR 33778, May 25, 2000]

CONTRACTORS

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

Yes, you may acquire and furnish excess personal property for use by your contractors subject to the criteria and restrictions in the Federal Acquisition Regulation (48 CFR part 45). When such property is no longer needed by your contractors or your agency, you must dispose of the excess personal property in accordance with the provisions of this part.

COOPERATIVES

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

Yes, you must limit the total dollar amount of property transfers (in terms of original acquisition cost) to the dollar value of the cooperative agreement. For any transfers in excess of such amount, you must ensure that an official of your agency at a level higher than the officer administering the agreement approves the transfer. The Federal Government retains title to such property, except when provided by specific statutory authority.

PROJECT GRANTEES

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

You may furnish excess personal property for use by your grantees only when:

(a) The grantee holds a Federally sponsored project grant;

(b) The grantee is a public agency or a nonprofit tax-exempt organization under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

41 CFR Ch. 102 (7-1-02 Edition)

(c) The property is for use in connection with the grant; and

(d) You pay 25 percent of the original acquisition cost of the excess personal property, such funds to be deposited into the miscellaneous receipts fund of the U.S. Treasury. Exceptions to paying this 25 percent are provided in § 102-36.190. Title to property vests in the grantee when your agency pays 25 percent of the original acquisition cost.

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

No, you may acquire excess personal property for use by a project grantee without paying the 25 percent fee when any of the following conditions apply:

(a) The personal property was originally acquired from excess sources by your agency and has been placed into official use by your agency for at least one year. The Federal Government retains title to such property.

(b) The property is furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative State forest fire control programs. The Federal Government retains title to such property.

(c) The property is furnished by the U.S. Department of Agriculture to State or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E). The Federal Government retains title to such property.

(d) The property is not needed for donation under part 101-44 of this title, and is transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358). Title to such property transfers to the grantee. (You need not wait until after the donation screening period when furnishing excess personal property to recipients under the Agency for International Development (AID) Development Loan Program.)

(e) The property is scientific equipment transferred under section 11(e) of the National Science Foundation (NSF) Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will limit such transfers to property within Federal Supply

Federal Management Regulation

§ 102-36.220

Classification (FSC) groups 12, 14, 43, 48, 58, 59, 65, 66, 67, 68 and 70. GSA may approve transfers without reimbursement for property under other FSC groups when NSF certifies the item is a component of or related to a piece of scientific equipment or is a difficult-to-acquire item needed for scientific research. Regardless of FSC, GSA will not approve transfers of common-use or general-purpose items without reimbursement. Title to such property transfers to the grantee.

(f) The property is furnished in connection with grants to Indian tribes, as defined in section 3(c) of the Indian Financing Act (24 U.S.C. 1452(c)). Title passage is determined under the authorities of the administering agency.

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

You may furnish to your project grantees any property, except for consumable items, determined to be necessary and usable for the purpose of the grant. Consumable items are generally not transferable to project grantees. GSA may approve transfers of excess consumable items when adequate justification for the transfer accompanies such requests. For the purpose of this section “consumable items” are items which are intended for one-time use and are actually consumed in that one time; *e.g.*, drugs, medicines, surgical dressings, cleaning and preserving materials, and fuels.

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

Yes, subject to GSA approval, you may acquire excess personal property for cannibalization purposes. You may be required to provide a supporting statement that indicates disassembly of the item for secondary use has greater benefit than utilization of the item in its existing form and cost savings to the Government will result.

§ 102-36.205 Is there a limit to how much excess personal property we may furnish to our grantees?

Yes, you must monitor transfers of excess personal property so the total dollar amount of property transferred (in original acquisition cost) does not

exceed the dollar value of the grant. Any transfers above the grant amount must be approved by an official at an administrative level higher than the officer administering the grant.

Subpart D—Disposition of Excess Personal Property

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

You must report excess personal property to promote reuse by the Government to enable Federal agencies to benefit from the continued use of property already paid for with taxpayers’ money, thus minimizing new procurement costs. Reporting excess personal property to GSA helps assure that the information on available excess personal property is accessible and disseminated to the widest range of reuse customers.

REPORTING EXCESS PERSONAL PROPERTY

§ 102-36.215 How do we report excess personal property?

Report excess personal property as follows:

(a) Electronically submit the data elements required on the Standard Form 120 (SF 120), Report of Excess Personal Property, in a format specified and approved by GSA; or

(b) Submit a paper SF 120 to the regional GSA Personal Property Management office.

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

(a) Generally yes, regardless of the condition code, except as authorized in § 102-36.145 for direct transfers or as exempted in paragraph (b) of this section. Report all excess personal property, including excess personal property to which the Government holds title but is in the custody of your contractors, cooperatives, or project grantees.

(b) You are not required to report the following types of excess personal property to GSA for screening:

(1) Property determined appropriate for abandonment/destruction (see § 102-36.305).

(2) Nonappropriated fund property (see § 102-36.165).

§ 102-36.225

(3) Foreign excess personal property (see § 102-36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste.

(8) Controlled substances.

(9) Nuclear Regulatory Commission-controlled materials.

(10) Property dangerous to public health and safety.

(11) Classified items or property determined to be sensitive for reasons of national security.

(c) Refer to part 101-42 of this title for additional guidance on the disposition of classes of property under paragraphs (b)(7) through (b)(11) of this section.

§ 102-36.225 Must we report excess related personal property?

Yes, you must report excess related personal property to the Office of Real Property, GSA, in accordance with part 101-47 of this title.

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

(a) You must direct electronic submissions of excess personal property to the Federal Disposal System (FEDS) maintained by the Property Management Division (FBP), GSA, Washington, DC 20406.

(b) For paper submissions, you must send the SF 120 to the regional GSA Personal Property Management office for the region in which the property is located. For the categories of property listed in § 102-36.125(b), forward the SF 120 to the corresponding regions.

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

(a) You must provide the following data on excess personal property:

(1) The reporting agency and the property location.

(2) A report number (6-digit activity address code and 4-digit Julian date).

(3) 4-digit Federal Supply Class (use National Stock Number whenever available).

41 CFR Ch. 102 (7-1-02 Edition)

(4) Description of item, in sufficient detail.

(5) Quantity and unit of issue.

(6) Disposal Condition Code (see § 102-36.240).

(7) Original acquisition cost per unit and total cost (use estimate if original cost not available).

(8) Manufacturer, date of manufacture, part and serial number, when required by GSA.

(b) In addition, provide the following information on your report of excess, when applicable:

(1) Major parts/components that are missing.

(2) If repairs are needed, the type of repairs.

(3) Special requirements for handling, storage, or transportation.

(4) The required date of removal due to moving or space restrictions.

(5) If reimbursement is required, the authority under which the reimbursement is requested, the amount of reimbursement and the appropriate fund code to which money is to be deposited.

(6) If you will conduct the sale of personal property that is not transferred or donated.

§ 102-36.240 What are the disposal condition codes?

The disposal condition codes are contained in the following table:

Disposal condition code	Definition
1	New. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
4	Usable. Property which shows some wear, but can be used without significant repair.
7	Repairable. Property which is unusable in its current condition but can be economically repaired.
X	Salvage. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
S	Scrap. Property which has no value except for its basic material content.

Federal Management Regulation

§ 102-36.275

DISPOSING OF EXCESS PERSONAL PROPERTY

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

Yes, you are accountable for the excess personal property until the time it is picked up by the designated recipient or its agent. You are responsible for all care and handling charges while the excess personal property is going through the screening and disposal process.

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

Generally you retain physical custody of the excess personal property prior to its final disposition. Very rarely GSA may consider accepting physical custody of excess personal property. Under special circumstances, GSA may take custody or may direct the transfer of partial or total custody to other executive agencies, with their consent.

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

Contact your regional GSA Personal Property Management office for any existing interagency agreements that would allow you to turn in excess personal property to a Federal facility. You are responsible for any turn-in costs and all costs related to transporting the excess personal property to these facilities.

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

For expeditious transfer of excess personal property you should:

(a) Provide complete and accurate property descriptions and condition codes on the report of excess to facilitate the selection of usable property by potential users.

(b) Ensure that any available operating manual, parts list, diagram, maintenance log, or other instructional publication is made available

with the property at the time of transfer.

(c) Advise the designated recipient of any special requirements for dismantling, shipping/transportation.

(d) When the excess personal property is located at a facility due to be closed, provide advance notice of the scheduled date of closing, and ensure there is sufficient time for screening and removal of property.

§ 102-36.265 What if there are competing requests for the same excess personal property?

(a) GSA will generally approve transfers on a first-come, first-served basis. When more than one Federal agency requests the same item, and the quantity available is not sufficient to meet the demand of all interested agencies, GSA will consider factors such as national defense requirements, emergency needs, avoiding the necessity of a new procurement, energy conservation, transportation costs, and retention of title in the Government. GSA will normally give preference to the agency that will retain title in the Government.

(b) Requests for property for the purpose of cannibalization will normally be subordinate to requests for use of the property in its existing form.

§ 102-36.270 What if a Federal agency requests personal property that is undergoing donation screening or in the sales process?

Prior to final disposition, GSA will consider requests from authorized Federal activities for excess personal property undergoing donation screening or in the sales process. Federal transfers may be authorized prior to removal of the property under a donation or sales action.

§ 102-36.275 May we dispose of excess personal property without GSA approval?

No, you may not dispose of excess personal property without GSA approval except under the following limited situations:

(a) You may transfer to another Federal agency excess personal property that has not yet been reported to GSA, under direct transfer procedures contained in § 102-36.145.

§ 102-36.280

(b) You may dispose of excess personal property that is not required to be reported to GSA (see § 102-36.220(b)).

(c) You may dispose of excess personal property without going through GSA when such disposal is authorized by law.

§ 102-36.280 May we withdraw from the disposal process excess personal property that we have reported to GSA?

Yes, you may withdraw excess personal property from the disposal process, but only with the approval of GSA and to satisfy an internal agency requirement. Property that has been approved for transfer or donation or offered for sale by GSA may be returned to your control with proper justification.

TRANSFERS WITH REIMBURSEMENT

§ 102-36.285 May we charge for personal property transferred to another Federal agency?

(a) When any one of the following conditions applies, you may require and retain reimbursement for the excess personal property from the recipient:

(1) Your agency has the statutory authority to require and retain reimbursement for the property.

(2) You are transferring the property under the exchange/sale authority.

(3) You had originally acquired the property with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue. It is current executive branch policy that working capital fund property shall be transferred without reimbursement.

(4) You or the recipient is the U.S. Postal Service.

(5) You or the recipient is the DC Government.

(6) You or the recipient is a wholly owned or mixed-ownership Government corporation.

(b) You may charge for direct costs you incurred incident to the transfer, such as packing, loading and shipping of the property. The recipient is responsible for such charges unless you waive the amount involved.

41 CFR Ch. 102 (7-1-02 Edition)

(c) You may not charge for overhead or administrative expenses or the costs for care and handling of the property pending disposition.

§ 102-36.290 How much do we charge for excess personal property on a transfer with reimbursement?

(a) You may require reimbursement in an amount up to the fair market value of the property when the transfer involves property meeting conditions in § 102-36.285(a)(1) through (a)(4).

(b) When you or the recipient is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102-36.285(a)(5) and (a)(6)), you may only require fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. A higher fair value may be used if you and the recipient agency agree. Due to special circumstances or the nature of the property, you may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

REPORT OF DISPOSAL ACTIVITY

§ 102-36.295 Is there any reporting requirement on the disposition of excess personal property?

Yes, you must report annually to GSA personal property furnished in any manner in that year to any non-Federal recipients, with respect to property obtained as excess or as property determined to be no longer required for the purposes of the appropriation from which it was purchased. GSA will subsequently submit a summary of these Non-Federal Recipients Reports to Congress.

§ 102-36.300 How do we report the furnishing of personal property to non-Federal recipients?

(a) Submit your annual report of personal property furnished to non-Federal recipients, in letter form, to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW, Washington, DC 20405, within 90 calendar days after the close of each fiscal

Federal Management Regulation

§ 102-36.330

year. The report must cover personal property disposed during the fiscal year in all areas within the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. Negative reports are required.

(b) The report (interagency report control number 0154—GSA—AN) must reference this part and contain the following:

- (1) Names of the non-Federal recipients.
- (2) Status of the recipients (contractor, cooperative, project grantee, etc.).
- (3) Total original acquisition cost of excess personal property furnished to each type of recipient, by type of property (two-digit FSC groups).

ABANDONMENT/DESTRUCTION

§ 102-36.305 May we abandon or destroy excess personal property without reporting it to GSA?

Yes, you may abandon or destroy excess personal property when you have made a written determination that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap).

§ 102-36.310 Who makes the determination to abandon or destroy excess personal property?

To abandon or destroy excess personal property, an authorized official of your agency makes a written finding that must be approved by a reviewing official who is not directly accountable for the property.

§ 102-36.315 Are there any restrictions to the use of the abandonment/destruction authority?

Yes, the following restrictions apply:

- (a) You must not abandon or destroy property in a manner which is detrimental or dangerous to public health or safety. Additional guidelines for the abandonment/destruction of hazardous materials are prescribed in part 101-42 of this title.

(b) If you become aware of an interest from an entity in purchasing the property, you must implement sales procedures in lieu of abandonment/destruction.

§ 102-36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?

In lieu of abandonment/destruction, you may donate such excess personal property only to a public body without going through GSA. A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government. If you become aware of an interest from an eligible non-profit organization (see part 101-44 of this title) that is not a public body in acquiring the property, you must contact the regional GSA Personal Property Management office and implement donation procedures in accordance with part 101-44 of this title.

§ 102-36.325 What must be done before the abandonment/destruction of excess personal property?

Except as provided in § 102-36.330, you must provide public notice of intent to abandon or destroy excess personal property, in a format and timeframe specified by your agency regulations (such as publishing a notice in a local newspaper, posting of signs in common use facilities available to the public, or providing bulletins on your website through the internet). You must also include in the notice an offer to sell in accordance with part 101-45 of this title.

§ 102-36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?

Yes, you are not required to provide public notice when:

- (a) The value of the property is so little or the cost of its care and handling, pending abandonment/destruction, is so great that its retention for advertising for sale, even as scrap, is clearly not economical;

§ 102-36.335

(b) Abandonment or destruction is required because of health, safety, or security reasons; or

(c) When the original acquisition cost of the item (estimated if unknown) is less than \$500.

[65 FR 31218, May 16, 2000, as amended at 65 FR 34983, June 1, 2000]

Subpart E—Personal Property Whose Disposal Requires Special Handling

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

Yes, you must comply with the additional provisions in this subpart when disposing of the types of personal property listed in this subpart.

AIRCRAFT AND AIRCRAFT PARTS

§ 102-36.340 What must we do when disposing of excess aircraft?

(a) You must report to GSA all excess aircraft, regardless of condition or dollar value, and provide the following information on the SF 120:

(1) Manufacturer, date of manufacture, model, serial number.

(2) Major components missing from the aircraft (such as engines, electronics).

(3) Whether or not the:

(i) Aircraft is operational;

(ii) Dataplate is available;

(iii) Historical and maintenance records are available;

(iv) Aircraft has been previously certificated by the Federal Aviation Administration (FAA) and/or has been maintained to FAA airworthiness standards;

(v) Aircraft was previously used for non-flight purposes (*i.e.*, ground training or static display), and has been subjected to extensive disassembly and re-assembly procedures for ground training, or repeated burning for fire-fighting training purposes.

(4) For military aircraft, indicate Category A, B, or C as designated by DOD, as follows:

41 CFR Ch. 102 (7-1-02 Edition)

Cat- egory of air- craft	Description
A	Aircraft authorized for sale and exchange for commercial use.
B	Aircraft previously used for ground instruction and/or static display.
C	Aircraft that are combat configured as determined by DOD.

NOTE TO § 102-36.340(A)(4): For additional information on military aircraft see Defense Materiel Disposition Manual, DOD 4160.21-M, accessible at www.drms.dla.mil under Publications.

(b) When the designated transfer or donation recipient's intended use is for non-flight purposes, you must remove and return the dataplate to GSA Property Management Branch, San Francisco, California prior to releasing the aircraft to the authorized recipient. GSA will forward the dataplates to FAA.

(c) You must also submit a report of the final disposition of the aircraft to the Federal Aviation Interactive Reporting System (FAIRS) maintained by the Aircraft Management Policy Division (MTA), GSA, 1800 F Street, NW, Washington, DC 20405. For additional instructions on reporting to FAIRS see part 101-37 of this title.

§ 102-36.345 May we dispose of excess Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, you may dispose of excess FSCAP, but first you must determine whether the documentation available is adequate to allow transfer, donation, or sale of the part in accordance with part 101-37, subpart 101-37.6, of this title. Otherwise, you must mutilate undocumented FSCAP that has no traceability to its original equipment manufacturer and dispose of it as scrap. When reporting excess FSCAP, annotate the manufacturer, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120, and ensure that all available historical and maintenance records accompany the part at the time of issue.

§ 102-36.350 How do we identify a FSCAP?

Any aircraft part designated as FSCAP is assigned an alpha Criticality

Federal Management Regulation

§ 102-36.375

Code, and the code is annotated on the original transfer document when you acquire the part. You must perpetuate the appropriate FSCAP Criticality Code on all personal property records. You may contact the Federal agency or Military service that originally owned the part for assistance in making this determination, or query DOD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) for the part. For assistance in subscribing to the FLIS service contact the FedLog Consumer Support Office, 800-351-4381.

§ 102-36.355 What are the FSCAP Criticality Codes?

The FSCAP Criticality Codes are contained in the following table:

FSCAP code	Description
E	FSCAP specially designed to be or selected as being nuclear hardened.
F	Flight Safety Critical Aircraft Part.

§ 102-36.360 How do we dispose of aircraft parts that are life-limited but have no FSCAP designation?

When disposing of life-limited aircraft parts that have no FSCAP designation, you must ensure that tags and labels, historical data and maintenance records accompany the part on any transfers, donations or sales. For additional information regarding the disposal of life-limited parts with or without tags or documentation refer to part 101-37 of this title.

CANINES, LAW ENFORCEMENT

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

Yes, under Public Law 105-27 (111 Stat. 244), when the canine is no longer needed for law enforcement duties, you may donate the canine to an individual who has experience handling canines in the performance of those official duties.

DISASTER RELIEF PROPERTY

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

Yes, upon declaration by the President of an emergency or a major disaster, you may loan excess personal property to State and local governments, with or without compensation and prior to reporting it as excess to GSA, to alleviate suffering and damage resulting from any emergency or major disaster (Disaster Relief Act of 1974 (Public Law 93-288 (42 U.S.C. 5121)) and Executive Orders 11795 (3 CFR, 1971-1975 Comp., p. 887) and 12148 (3 CFR, 1979 Comp., p. 412), as amended). If the loan involves property that has already been reported excess to GSA, you may withdraw the item from the disposal process subject to approval by GSA. You may also withdraw excess personal property for use by your agency in providing assistance in disaster relief. You are still accountable for this property and your agency is responsible for developing agencywide procedures for recovery of such property.

FIREARMS

§ 102-36.375 May we dispose of excess firearms?

Yes, unless you have specific statutory authority to do otherwise, excess firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. GSA may donate certain classes of surplus firearms to State and local government activities whose primary function is the enforcement of applicable Federal, State, and/or local laws and whose compensated law enforcement officers have the authority to apprehend and arrest. Firearms not transferred or donated must be destroyed and sold as scrap. For additional guidance on the disposition of firearms refer to part 101-42 of this title.

§ 102-36.380

FOREIGN EXCESS PERSONAL PROPERTY

§ 102-36.380 Who is responsible for disposing of foreign excess personal property?

Your agency is responsible for disposing of your foreign excess personal property, as provided by title IV of the Property Act.

§ 102-36.385 What are our responsibilities in the disposal of foreign excess personal property?

When disposing of foreign excess personal property you must:

(a) Determine whether it is in the interest of the U.S. Government to return foreign excess personal property to the U.S. for further re-use or to dispose of the property overseas.

(b) Ensure that any disposal of property overseas conforms to the foreign policy of the United States and the terms and conditions of any applicable Host Nation Agreement.

(c) Ensure that, when foreign excess personal property is donated or sold overseas, donation/sales conditions include a requirement for compliance with U.S. Department of Commerce and Department of Agriculture regulations when transporting any personal property back to the U.S.

(d) Inform the U.S. State Department of any disposal of property to any foreign governments or entities.

§ 102-36.390 How may we dispose of foreign excess personal property?

To dispose of foreign excess personal property, you may:

(a) Offer the property for re-use by U.S. Federal agencies overseas;

(b) Return the property to the U.S. for re-use by eligible recipients;

(c) Sell, exchange, lease, or transfer such property for cash, credit, or other property;

(d) Donate medical materials or supplies to nonprofit medical or health organizations, including those qualified under sections 214(b) and 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2174, 2357); or

(e) Abandon, destroy or donate such property when you determine that it has no commercial value or the estimated cost of care and handling would exceed the estimated proceeds from its sale, in accordance with sec. 402(a) of

41 CFR Ch. 102 (7-1-02 Edition)

the Property Act. Abandonment, destruction or donation actions must also comply with the laws of the country in which the property is located.

§ 102-36.395 How may GSA assist us in disposing of foreign excess personal property?

You may request GSA's assistance in the screening of foreign excess personal property for possible re-use by eligible recipients within the U.S. GSA may, after consultation with you, designate property for return to the United States for transfer or donation purposes.

§ 102-36.400 Who pays for the transportation costs when foreign excess personal property is returned to the United States?

When foreign excess property is to be returned to the U.S. for the purpose of an approved transfer or donation under the provisions of Sections 202 and 203 of the Property Act, the receiving agency is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

GIFTS

§ 102-36.405 May we keep gifts given to us from the public?

If your agency has gift retention authority, you may retain gifts from the public. Otherwise, you must report gifts you receive on a SF 120 to GSA. You must report gifts received from a foreign government in accordance with part 101-49 of this title.

§ 102-36.410 How do we dispose of a gift in the form of money or intangible personal property?

Report intangible personal property to GSA, Personal Property Management Division (FBP), Washington, D.C. 20406. You must not transfer or dispose of this property without prior approval of GSA. The Secretary of the Treasury will dispose of money and negotiable instruments such as bonds, notes, or other securities under the authority of 31 U.S.C. 324.

Federal Management Regulation

§ 102-36.440

§ 102-36.415 How do we dispose of gifts other than intangible personal property?

(a) When the gift is offered with the condition that the property be sold and the proceeds used to reduce the public debt, report the gift to the regional GSA Personal Property Management office in which the property is located. GSA will convert the gift to money upon acceptance and deposit the proceeds into a special account of the U.S. Treasury.

(b) When the gift is offered with no conditions or restrictions, and your agency has gift retention authority, you may use the gift for an authorized official purpose without reporting to GSA. The property will then lose its identity as a gift and you must account for it in the same manner as Federal personal property acquired from authorized sources. When the property is no longer needed, you must report it as excess personal property to GSA.

(c) When the gift is offered with no conditions or restrictions, but your agency does not have gift retention authority, you must report it to the regional GSA Personal Property Management office. GSA will offer the property for screening for possible transfer to a Federal agency or convert the gift to money and deposit the funds with U.S. Treasury. If your agency is interested in keeping the gift for an official purpose, you must annotate your interest on the SF 120 and also submit a SF 122.

§ 102-36.420 How do we dispose of gifts from foreign governments or entities?

Report foreign gifts on a SF 120 to GSA, Personal Property Management Division (FBP), Washington, DC 20406, for possible use by your agency, or for transfer, donation or sale in accordance with the provisions of part 101-49 of this title.

HAZARDOUS PERSONAL PROPERTY

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

Yes, but only in accordance with part 101-42 of this title. When reporting excess hazardous property to GSA, certify on the SF 120 that the property has

been packaged and labeled as required. Annotate any special requirements for handling, storage, or use, and provide a description of the actual or potential hazard.

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

§ 102-36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?

You may dispose of excess MLIs/CCLIs only when you comply with the additional disposal and demilitarization (DEMIL) requirements contained in part 101-42 of this title. MLIs may require demilitarization when issued to any non-DoD entity, and will require appropriate licensing when exported from the U.S. CCLIs usually require export licensing when transported from the U.S.

§ 102-36.435 How do we identify Munitions List Items (MLIs)/Commerce Control List Items (CCLIs) requiring demilitarization?

You identify MLIs/CCLIs requiring demilitarization by the demilitarization code that is assigned to each MLI or CCLI. The code indicates the type and scope of demilitarization and/or export controls that must be accomplished, when required, before issue to any non-DOD activity. For a listing of the codes and additional guidance on DEMIL procedures see DOD Demilitarization and Trade Security Control Manual, DOD 4160.21-M-1.

PRINTING EQUIPMENT AND SUPPLIES

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

Yes, in accordance with 44 U.S.C. 312, you must submit reports of excess printing and binding machinery, equipment, materials, and supplies to the Public Printer, Government Printing Office (GPO), Customer Service Manager, North Capitol and H Streets, NW, Washington, DC 20401. If GPO has no requirement for the property, you must then submit the report to GSA.

§ 102-36.445

RED CROSS PROPERTY

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

Yes, when reporting excess personal property which was processed, produced, or donated by the American National Red Cross, note "RED CROSS PROPERTY" on the SF 120 or report document. GSA will offer to return this property to the Red Cross if no other Federal agency has a need for it. If the Red Cross has no requirement the property continues in the disposal process and is available for donation.

SHELF-LIFE ITEMS

§ 102-36.450 Do we report excess shelf-life items?

(a) When there are quantities on hand that would not be utilized by the expiration date and cannot be returned to the vendor for credit, you must report such expected overage as excess for possible transfer and disposal to ensure maximum use prior to deterioration.

(b) You need not report expired shelf-life items. You may dispose of property with expired shelf-life by abandonment/destruction in accordance with §102-36.305 and in compliance with Federal, State, and local waste disposal and air and water pollution control standards.

§ 102-36.455 How do we report excess shelf-life items?

You must identify the property as shelf-life items by "SL", indicate the expiration date, whether the date is the original or an extended date, and if the date is further extendable. GSA may adjust the screening period based on re-use potential and the remaining useful shelf life.

§ 102-36.460 Do we report excess medical shelf-life items held for national emergency purposes?

When the remaining shelf life of any medical materials or supplies held for national emergency purposes is of too short a period to justify their continued retention, you should report such property excess for possible transfer and disposal. You must make such excess determinations at such time as to

41 CFR Ch. 102 (7-1-02 Edition)

ensure that sufficient time remains to permit their use before their shelf life expires and the items are unfit for human use. You must identify such items with "MSL" and the expiration date, and indicate any specialized storage requirements.

§ 102-36.465 May we transfer or exchange excess medical shelf-life items with other Federal agencies?

Yes, you may transfer or exchange excess medical shelf-life items held for national emergency purposes with any other Federal agency for other medical materials or supplies, without GSA approval and without regard to part 101-46 of this title. You and the transferee agency will agree to the terms and prices. You may credit any proceeds derived from such transactions to your agency's current applicable appropriation and use the funds only for the purchase of medical materials or supplies for national emergency purposes.

VESSELS

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

(a) When you dispose of excess vessels you must indicate on the SF 120 the following information:

(1) Whether the vessel has been inspected by the Coast Guard.

(2) Whether testing for hazardous materials has been done. And if so, the result of the testing, specifically the presence or absence of PCB's and asbestos and level of contamination.

(3) Whether hazardous materials clean-up is required, and when it will be accomplished by your agency.

(b) In accordance with section 203(i) of the Property Act, the Federal Maritime Administration (FMA), Department of Transportation, is responsible for disposing of surplus vessels determined to be merchant vessels or capable of conversion to merchant use and weighing 1,500 gross tons or more. The SF 120 for such vessels shall be forwarded to GSA for submission to FMA.

(c) Disposal instructions regarding vessels in this part do not apply to battleships, cruisers, aircraft carriers, destroyers, and submarines.

Subpart F—Miscellaneous Disposition

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

(a) The Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)), authorizes Federal agencies to transfer excess education-related Federal equipment to educational institutions or non-profit organizations for educational and research activities. Executive Order 12999 (3 CFR, 1996 Comp., p. 180) requires, to the extent permitted by law and where appropriate, the transfer of computer equipment for use by schools or non-profit organizations.

(b) Each Federal agency is required to identify a point of contact within the agency to assist eligible recipients, and to publicize the availability of such property to eligible communities. Excess education-related equipment may be transferred directly under established agency procedures, or reported to GSA as excess for subsequent transfer to potential eligible recipients as appropriate. You must include transfers under this authority in the annual Non-Federal Recipients Report (See § 102-36.295) to GSA.

(c) The “Computers for Learning” website has been developed to streamline the transfer of excess and surplus Federal computer equipment to schools and nonprofit educational organizations. For additional information about this program access the “Computers for Learning” website, <http://www.computers.fed.gov>.

PART 102-37—DONATION OF SURPLUS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

102-37.5 What does this part cover?

102-37.10 What is the primary governing authority for this part?

102-37.15 Who must comply with the provisions of this part?

102-37.20 How do we request a deviation from this part and who can approve it?

DEFINITIONS

102-37.25 What definitions apply to this part?

DONATION OVERVIEW

102-37.30 When does property become available for donation?

102-37.35 Who handles the donation of surplus property?

102-37.40 What type of surplus property is available for donation?

102-37.45 How long is property available for donation screening?

102-37.50 What is the general process for requesting surplus property for donation?

102-37.55 Who pays for transportation and other costs associated with a donation?

102-37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

102-37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

102-37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

102-37.75 What should be included in a shortage report?

102-37.80 What happens to surplus property that isn't transferred for donation?

102-37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Subpart B—General Services Administration (GSA)

102-37.90 What are GSA's responsibilities in the donation of surplus property?

102-37.95 How will GSA resolve competing requests?

102-37.100 What factors will GSA consider in allocating surplus property among SASPs?

102-37.105 Is GSA required to compile any reports concerning the donation program?

Subpart C—Holding Agency

102-37.110 What are a holding agency's responsibilities in the donation of surplus property?

102-37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

102-37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

102-37.125 What are some donations that do not require GSA's approval?

Subpart D—State Agency for Surplus Property (SASP)

102-37.130 What are a SASP's responsibilities in the donation of surplus property?

Pt. 102-37

102-37.135 How does a SASP become eligible to distribute surplus property to donees?

STATE PLAN OF OPERATION

- 102-37.140 What is a State plan of operation?
- 102-37.145 Who is responsible for developing, certifying, and submitting the plan?
- 102-37.150 What must a State legislature include in the plan?
- 102-37.155 When does a plan take effect?
- 102-37.160 Must GSA approve amendments or modifications to the plan?
- 102-37.165 Do plans or major amendments require public notice?
- 102-37.170 What happens if a SASP does not operate in accordance with its plan?

SCREENING AND REQUESTING PROPERTY

- 102-37.175 How does a SASP find out what property is potentially available for donation?
- 102-37.180 Does a SASP need special authorization to screen property at Federal facilities?
- 102-37.185 How does a SASP obtain screening authorization for itself or its donees?
- 102-37.190 What records must a SASP maintain on authorized screeners?
- 102-37.195 Does a SASP have to have a donee in mind to request surplus property?
- 102-37.200 What certifications must a SASP make when requesting surplus property for donation?
- 102-37.205 What agreements must a SASP make?
- 102-37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?
- 102-37.215 When must a SASP make a certification regarding lobbying?

JUSTIFYING SPECIAL TRANSFER REQUESTS

- 102-37.220 Are there special types of surplus property that require written justification when submitting a transfer request?
- 102-37.225 What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?
- 102-37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?
- 102-37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?
- 102-37.240 How must a transfer request for surplus firearms be justified?

CUSTODY, CARE, AND SAFEKEEPING

- 102-37.245 What must a SASP do to safeguard surplus property in its custody?
- 102-37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?
- 102-37.255 Must a SASP insure surplus property against loss or damage?

41 CFR Ch. 102 (7-1-02 Edition)

DISTRIBUTION OF PROPERTY

- 102-37.260 How must a SASP document the distribution of surplus property?
- 102-37.265 May a SASP distribute surplus property to eligible donees of another State?
- 102-37.270 May a SASP retain surplus property for its own use?

SERVICE AND HANDLING CHARGES

- 102-37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?
- 102-37.280 How may a SASP use service charge funds?
- 102-37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

DISPOSING OF UNDISTRIBUTED PROPERTY

- 102-37.290 What must a SASP do with surplus property it cannot donate?
- 102-37.295 Must GSA approve a transfer between SASPs?
- 102-37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?
- 102-37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?
- 102-37.310 What must a proposal to sell undistributed surplus property include?
- 102-37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?
- 102-37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

COOPERATIVE AGREEMENTS

- 102-37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?
- 102-37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?
- 102-37.335 May a SASP enter into a cooperative agreement with another SASP?
- 102-37.340 When may a SASP terminate a cooperative agreement?

AUDITS AND REVIEWS

- 102-37.345 When must a SASP be audited?
- 102-37.350 Does coverage under the single audit process in OMB Circular A-133 exempt a SASP from other reviews of its program?
- 102-37.355 What obligations does a SASP have to ensure that donees meet Circular A-133 requirements?

REPORTS

- 102-37.360 What reports must a SASP provide to GSA?

Federal Management Regulation

Pt. 102-37

LIQUIDATING A SASP

- 102-37.365 What steps must a SASP take if the State decides to liquidate the agency?
- 102-37.370 Do liquidation plans require public notice?

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

- 102-37.375 How is the pronoun “you” used in this subpart?
- 102-37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

DONEE ELIGIBILITY

- 102-37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?
- 102-37.390 What basic criteria must an activity meet before a SASP can qualify it for eligibility?
- 102-37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?
- 102-37.400 What type of eligibility information must a SASP maintain on donees?
- 102-37.405 How often must a SASP update donee eligibility records?
- 102-37.410 What must a SASP do if a donee fails to maintain its eligibility status?
- 102-37.415 What should a SASP do if an applicant appeals a negative eligibility decision?

CONDITIONAL ELIGIBILITY

- 102-37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but are unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?
- 102-37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?
- 102-37.430 What property can a SASP make available to a donee with conditional eligibility?

TERMS AND CONDITIONS OF DONATION

- 102-37.435 For what purposes may donees acquire and use surplus property?
- 102-37.440 May donees acquire property for exchange?
- 102-37.445 What certifications must a donee make before receiving property?
- 102-37.450 What agreements must a donee make?

SPECIAL HANDLING OR USE CONDITIONS

- 102-37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?
- 102-37.460 What special terms and conditions apply to the donation of aircraft and vessels?

RELEASE OF RESTRICTIONS

- 102-37.465 May a SASP modify or release any of the terms and conditions of donation?
- 102-37.470 At what point may restrictions be released on property that has been authorized for cannibalization?
- 102-37.475 What are the requirements for releasing restrictions on property being considered for exchange?

COMPLIANCE AND UTILIZATION

- 102-37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?
- 102-37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?
- 102-37.490 When must a SASP coordinate with GSA on compliance actions?
- 102-37.495 How must a SASP handle funds derived from compliance actions?

RETURNS AND REIMBURSEMENT

- 102-37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?
- 102-37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

SPECIAL PROVISIONS PERTAINING TO SEAS

- 102-37.510 Are there special requirements for donating property to SEAs?
- 102-37.515 Do SEAs have a priority over other SASP donees for DOD property?

Subpart F—Donations to Public Airports

- 102-37.520 What is the authority for public airport donations?
- 102-37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?
- 102-37.530 What are FAA's responsibilities in the donation of surplus property to public airports?
- 102-37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

Subpart G—Donations to the American National Red Cross

- 102-37.540 What is the authority for donations to the American National Red Cross?
- 102-37.545 What type of property may the American National Red Cross receive?
- 102-37.550 What steps must the American National Red Cross take to acquire property?
- 102-37.555 What happens to property the American National Red Cross does not request?

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

- 102-37.560 What is a public body?
- 102-37.565 What is the authority for donations to public bodies?
- 102-37.570 What type of property may a holding agency donate under this subpart?
- 102-37.575 Is there a special form for holding agencies to process donations?
- 102-37.580 QWho is responsible for costs associated with the donation?

APPENDIX A—MISCELLANEOUS DONATION STATUTES

APPENDIX B—ELEMENTS OF A STATE PLAN OF OPERATION

APPENDIX C—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

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

SOURCE: 67 FR 2584, Jan. 18, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 102-37.5 What does this part cover?

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102-37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)(1)), as amended (the Property Act), gives the

General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

§ 102-37.15 Who must comply with the provisions of this part?

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

§ 102-37.20 How do we request a deviation from this part and who can approve it?

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

DEFINITIONS

§ 102-37.25 What definitions apply to this part?

The following definitions apply to this part:

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Donee means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Federal Management Regulation

§ 102-37.40

Holding agency means the executive agency having accountability for, and generally possession of, the property involved.

Period of restriction means the period of time for keeping donated property in use for the purpose for which it was donated.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of titles 40 and 41 of the United States Code), the law that centralized Federal property management and disposal functions under the GSA.

Screening means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

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

Standard Form (SF) 123, Transfer Order Surplus Personal Property means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

Surplus personal property (surplus property) means excess personal property (as defined in §102-36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

Surplus release date means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

Transferee means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

DONATION OVERVIEW

§ 102-37.30 When does property become available for donation?

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

§ 102-37.35 Who handles the donation of surplus property?

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

§ 102-37.40 What type of surplus property is available for donation?

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

§ 102-37.45

(b) Property acquired with trust funds (e.g., Social Security Trust Funds).

(c) Non-appropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the GSA Office of Governmentwide Policy.

§ 102-37.45 How long is property available for donation screening?

Entities authorized to participate in the donation program may screen property, concurrently with Federal agencies, as soon as the property is reported as excess up until the surplus release date. The screening period is normally 21 calendar days, except as noted in § 102-36.95 of this chapter.

§ 102-37.50 What is the general process for requesting surplus property for donation?

The process for requesting surplus property for donation varies, depending on who is making the request.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to the appropriate GSA regional office. Requests must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property, or its electronic equivalent. Public airports must have FAA certify their transfer requests prior to submission to GSA for approval. GSA may ask SASPs or public airports to submit any additional information required to support and justify transfer of the property.

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part.

41 CFR Ch. 102 (7-1-02 Edition)

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency (see subpart H of this part).

§ 102-37.55 Who pays for transportation and other costs associated with a donation?

The receiving organization (the transferee) is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs, in the case of SASPs, may be passed on to donees that receive the property.

§ 102-37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

The transferee (or the transferee's agent) must remove property from the holding agency premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or removal that it no longer needs the property, it must notify the GSA regional office that approved the transfer request.

§ 102-37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

When a prospective transferee decides it cannot use surplus property that has already been approved for transfer and declines to pick it up, the GSA regional office will advise any other SASP or public airport known to be interested in the property to submit a transfer request. If there is no transfer interest, GSA will release the property for other disposal.

§ 102-37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

When the quantity of property received doesn't agree with that approved by GSA on the SF 123, the transferee should handle the overage or shortage as follows:

Federal Management Regulation

§ 102–37.90

If . . .	And . . .	Then . . .
(a) More property is received than was approved by GSA for transfer.	The known or estimated acquisition cost of the line item(s) involved is \$500 or more.	Submit a SF 123 for the difference to GSA (Identify the property as an overage and include the original transfer order number.) ¹
(b) Less property is received than was approved by GSA for transfer.	The acquisition cost of the missing item(s) is \$500 or more.	Submit a shortage report to GSA, with a copy to the holding agency. ¹
(c) The known or estimated acquisition cost of the property is less than \$500		Annotate on your receiving and inventory records, a description of the property, its known or estimated acquisition cost, and the name of the holding agency.

¹ Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

§ 102–37.75 What should be included in a shortage report?

The shortage report should include:

- (a) The name and address of the holding agency;
- (b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and
- (c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

§ 102–37.80 What happens to surplus property that isn't transferred for donation?

Surplus property not transferred for donation is generally offered for sale under the provisions of part 101–45 of this title. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

§ 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or

listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

Subpart B—General Services Administration (GSA)

§ 102–37.90 What are GSA's responsibilities in the donation of surplus property?

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

- (a) Determines when property is surplus to the needs of the Government;
- (b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;
- (c) Oversees the care and handling of surplus property while it is in the custody of a SASP;
- (d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations

§ 102-37.95

made by the Federal Aviation Administration (see subpart F of this part);

(e) Donates to the American National Red Cross property (generally blood plasma and related medical materials) originally provided by the Red Cross to a Federal agency, but that has subsequently been determined surplus to Federal needs (see subpart G of this part);

(f) Approves, after consultation with the holding agency, foreign excess personal property to be returned to the United States for donation purposes;

(g) Coordinates and controls the level of SASP and donee screening at Federal installations;

(h) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102-37.455); and

(i) Keeps track of and reports on Federal donation programs (see § 102-37.105).

§ 102-37.95 How will GSA resolve competing transfer requests?

In case of requests from two or more SASPs, GSA will use the allocating criteria in § 102-37.100. When competing requests are received from public airports and SASPs, GSA will transfer property fairly and equitably, based on such factors as need, proposed use, and interest of the holding agency in having the property donated to a specific public airport.

§ 102-37.100 What factors will GSA consider in allocating surplus property among SASPs?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors:

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific service educational activity.

(c) Need and usability of property, as reflected by requests from SASPs. GSA will also give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property. (Requests for prop-

41 CFR Ch. 102 (7-1-02 Edition)

erty to be used as is will be given preference over cannibalization requests.)

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification from the intended donee.

(e) Whether a SASP has already received similar property in the past, and how much.

(f) Past performance of a SASP in effecting timely pickup or removal of property approved for transfer and making prompt distribution of property to eligible donees.

(g) The property's condition and its original acquisition cost.

(h) Relative neediness of each State based on the State's population and per capita income.

§ 102-37.105 Is GSA required to compile any reports concerning the donation program?

Yes, biennially, GSA must compile a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of surplus property;

(b) Statistical information on the amount of surplus property approved for transfer to the SASPs and donated to eligible non-Federal organizations during the report period (as well as the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any recommendations GSA wishes to make on the donation program.

Subpart C—Holding Agency

§ 102-37.110 What are a holding agency's responsibilities in the donation of surplus property?

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102-37.525 and § 102-42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

Federal Management Regulation

§ 102-37.140

(c) Set aside surplus property selected by a screener pending GSA approval of the transfer;

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102-37.115.

§ 102-37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. However, you may not include overhead or administrative costs in these charges.

§ 102-37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102-37.125.

§ 102-37.125 What are some donations that do not require GSA's approval?

(a) Some donations of surplus property that do not require GSA's approval are:

(1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102-36 of this chapter;

(2) Donations by holding agencies to public bodies under subpart H of this part;

(3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and

(4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 484(r).

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 102-36.300 of this chapter.

Subpart D—State Agency for Surplus Property (SASP)

§ 102-37.130 What are a SASP's responsibilities in the donation of surplus property?

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

(1) Public agency;

(2) Nonprofit educational or public health institution; or

(3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102-37.135 How does a SASP become eligible to distribute surplus property to donees?

In order to receive transfers of surplus property, a SASP must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102-37.200 and 102-37.205.

STATE PLAN OF OPERATION

§ 102-37.140 What is a State plan of operation?

A State plan of operation is a document developed under State law and

§ 102-37.145

approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102-37.145 Who is responsible for developing, certifying, and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for acceptance and certify that the SASP is authorized to:

- (a) Acquire and distribute property to eligible donees in the State;
- (b) Enter into cooperative agreements; and
- (c) Undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and set forth in the plan.

§ 102-37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.

§ 102-37.155 When does a plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

§ 102-37.160 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102-37.165 Do plans or major amendments require public notice?

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar

41 CFR Ch. 102 (7-1-02 Edition)

days to submit comments before filing the proposal.

§ 102-37.170 What happens if a SASP does not operate in accordance with its plan?

If a SASP does not operate in accordance with its plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

SCREENING AND REQUESTING PROPERTY

§ 102-37.175 How does a SASP find out what property is potentially available for donation?

A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA's or other agencies' computerized inventory system to electronically search for property that is potentially available for donation (see § 102-36.90 for information on GSA's system, FEDS).

§ 102-37.180 Does a SASP need special authorization to screen property at Federal facilities?

Yes, SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, Screener's Identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener-ID card to inspect or remove property previously set aside or approved by GSA for transfer.

§ 102-37.185 How does a SASP obtain screening authorization for itself or its donees?

(a) To obtain screening authorization for itself or donees, a SASP must submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) and a written request to the GSA regional office serving the area in which the intended screener is located. The request must:

- (1) State the prospective screener's name and the name and address of the organization he or she represents;

Federal Management Regulation

§ 102-37.205

(2) Specify the period of time and location(s) in which screening will be conducted; and

(3) Certify that the applicant is qualified to screen property.

(b) If the request is approved, GSA will complete the Optional Form 92 and return it to the SASP for issuance to the screener.

§ 102-37.190 What records must a SASP maintain on authorized screeners?

You must maintain a current record of all individuals authorized to screen for your SASP, including their names, addresses, telephone numbers, qualifications to screen, and any additional identifying information such as driver's license or social security numbers. In the case of donee screeners, you should place such records in the donee's eligibility file and review for currency each time a periodic review of the donee's file is undertaken.

§ 102-37.195 Does a SASP have to have a donee in mind to request surplus property?

Generally yes, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102-37.200 What certifications must a SASP make when requesting surplus property for donation?

When requesting or applying for property, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for

the purpose of education or public health (including research for any such purpose).

(3) An eligible nonprofit activity for programs for older individuals.

(4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA regulations, and that the property is usable and needed by the donee.

§ 102-37.205 What agreements must a SASP make?

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

§ 102-37.210

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see §102-37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in §102-37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in part 101-6, subpart 101-6.2, and part 101-8 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

§ 102-37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace

41 CFR Ch. 102 (7-1-02 Edition)

certification requirements are found at part 105-68, subpart 105-68.6, of this title.

§ 102-37.215 When must a SASP make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105-69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain surplus property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than \$100,000.

JUSTIFYING SPECIAL TRANSFER REQUESTS

§ 102-37.220 Are there special types of surplus property that require written justification when submitting a transfer request?

Yes, a SASP must obtain written justification from the intended donee, and submit it to GSA along with the transfer request, prior to allocation of:

(a) Aircraft and vessels covered by §102-37.455;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (see part 102-42 of this chapter);

(d) Items containing 50 parts per million or greater of polychlorinated biphenyl (see part 101-42 of this title);

(e) Firearms as described in part 101-42 of this title; and

(f) Any item on which written justification will assist GSA in making allocation to States with the greatest need.

§ 102-37.225 What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by §102-37.455 include:

(1) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a

Federal Management Regulation

§ 102-37.240

detailed plan of utilization for the property (see §102-37.230 for information a donee has to include in the letter of intent); and

(2) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation.

(b) For each SF 123 that GSA approves, you must include:

(1) Your distribution document, signed and dated by the authorized donee representative; and

(2) A conditional transfer document, signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102-37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?

A letter of intent for obtaining surplus aircraft or vessels must provide:

(a) A description of the aircraft or vessel requested. If the item is an aircraft, the description must include the manufacturer, date of manufacture, model, and serial number. If the item is a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of the donee's program and the number and types of aircraft or vessels it currently owns;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, the donee must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, the donee must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, disposition of unsalvageable parts, etc.) If a vessel is requested for waterway purposes, the donee must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent

docking on water or land, the donee must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft or vessel.

§ 102-37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?

When a donee wants surplus property to cannibalize, include the following statement on the SF 123: "Line Item Number(s) _____ requested for cannibalization.". In addition to including this statement, provide a detailed justification concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will approve requests for cannibalization only when it is clear from the justification that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

§ 102-37.240 How must a transfer request for surplus firearms be justified?

To justify a transfer request for surplus firearms, the requesting SASP must obtain and submit to GSA a letter of intent from the intended donee that provides:

(a) Identification of the donee applicant, including its legal name and complete address and the name, title, and telephone number of its authorized representative;

(b) The number of compensated officers with the power to apprehend and to arrest;

(c) A description of the firearm(s) requested;

(d) Details on the planned use of the firearm(s); and

(e) The number and types of donated firearms received during the previous 12 months through any other Federal program.

§ 102-37.245

CUSTODY, CARE, AND SAFEKEEPING

§ 102-37.245 What must a SASP do to safeguard surplus property in its custody?

To safeguard surplus property in your custody, you must provide adequate protection of property in your custody, including protection against the hazards of fire, theft, vandalism, and weather.

§ 102-37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?

If you learn that surplus property in your custody has been damaged or lost, you must always notify GSA and notify the appropriate law enforcement officials if a crime has been committed.

§ 102-37.255 Must a SASP insure surplus property against loss or damage?

No, you are not required to carry insurance on Federal surplus property in your custody. However, if you elect to carry insurance and the insured property is lost or damaged, you must submit a check made payable to GSA for any insurance proceeds received in excess of your actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

DISTRIBUTION OF PROPERTY

§ 102-37.260 How must a SASP document the distribution of surplus property?

All SASPs must document the distribution of Federal surplus property on forms that are prenumbered, provide for donees to indicate the primary purposes for which they are acquiring property, and include the:

(a) Certifications and agreements in §§ 102-37.200 and 102-37.205; and

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

§ 102-37.265 May a SASP distribute surplus property to eligible donees of another State?

Yes, you may distribute surplus property to eligible donees of another State, if you and the other SASP deter-

41 CFR Ch. 102 (7-1-02 Edition)

mine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement must be prepared as prescribed in § 102-37.335 and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP; and

(b) Forward copies of executed distribution documents to the donee's home SASP.

§ 102-37.270 May a SASP retain surplus property for its own use?

Yes, you can retain surplus property for use in operating the donation program, but only if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing SASP operations. GSA will notify you within 30 calendar days whether you may retain the property for use in your operations. Title to any surplus property GSA approves for your retention will vest in your SASP. You must maintain separate records for such property.

SERVICE AND HANDLING CHARGES

§ 102-37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?

No, service charge payments must readily identify the donee institution as the payer (or the name of the parent organization when that organization pays the operational expenses of the donee). Personal checks, personal cashier checks, personal money orders, and personal credit cards are not acceptable.

Federal Management Regulation

§ 102-37.310

§ 102-37.280 How may a SASP use service charge funds?

Funds accumulated from service charges may be deposited, invested, or used in accordance with State law to:

- (a) Cover direct and reasonable indirect costs of operating the SASP;
- (b) Purchase necessary equipment for the SASP;
- (c) Maintain a reasonable working capital reserve;
- (d) Rehabilitate surplus property, including the purchase of replacement parts;
- (e) Acquire or improve office or distribution center facilities; or
- (f) Pay for the costs of internal and external audits.

§ 102-37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

No, except as provided in § 102-37.495, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees.

DISPOSING OF UNDISTRIBUTED PROPERTY

§ 102-37.290 What must a SASP do with surplus property it cannot donate?

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether or not the property is usable.

(1) If you determine that the undistributed surplus property is not usable, you should seek GSA approval to abandon or destroy the property in accordance with § 102-37.320.

(2) If you determine that the undistributed surplus property is usable, you should immediately offer it to other SASPs. If other SASPs cannot use the property, you should promptly report it to GSA for redisposal (i.e., disposition through retransfer, sale, or other means).

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102-37.295 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA will approve or disapprove the request within 30 calendar days of receipt of the transfer order.

§ 102-37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?

When reporting unneeded usable property that is not required for transfer to another SASP, provide GSA with the:

- (a) Best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;
- (b) Date you received each line item of property listed; and
- (c) Certification of reimbursement requested under § 102-37.315.

§ 102-37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?

Yes, you may act as GSA's agent in selling undistributed surplus property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. You must notify GSA each time you propose to conduct a sale under the cooperative agreement. You may request approval to conduct a sale when reporting the property to GSA for disposal instructions. If no formal agreement exists, you may submit such an agreement at that time for approval.

§ 102-37.310 What must a proposal to sell undistributed surplus property include?

- (a) Your request to sell undistributed surplus property must include:
 - (1) The proposed sale date;
 - (2) A listing of the property;
 - (3) Location of the sale;
 - (4) Method of sale; and
 - (5) Proposed advertising to be used.
- (b) If the request is approved, the GSA regional sales office will provide

§ 102-37.315

the necessary forms and instructions for you to use in conducting the sale.

§ 102-37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?

(a) When undistributed surplus property is transferred to a Federal agency or another SASP, or disposed of by public sale, you are entitled to recoup:

(1) Direct costs you initially paid to the Federal holding agency, including but not limited to, packing, preparation for shipment, and loading. You will not be reimbursed for actions following receipt of the property, including unloading, moving, repairing, preserving, or storage.

(2) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt. You must document and certify the amount of reimbursement requested for these costs.

(b) Reimbursable arrangements should be made prior to transfer of the property. In the case of a Federal transfer, GSA will secure agreement of the Federal agency to reimburse your authorized costs, and annotate the amount of reimbursement on the transfer document. You must coordinate and make arrangements for reimbursement when property is transferred to another SASP. If you and the receiving SASP cannot agree on an appropriate reimbursement charge, GSA will determine appropriate reimbursement. The receiving SASP must annotate the reimbursement amount on the transfer document prior to its being forwarded to GSA for approval.

(c) When undistributed property is disposed of by public sale, GSA must approve the amount of sales proceeds you may receive to cover your costs. Generally, this will not exceed 50 percent of the total sales proceeds.

§ 102-37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

(a) You may abandon or destroy undistributed surplus property when you have made a written finding that the property has no commercial value or the estimated cost of its continued

41 CFR Ch. 102 (7-1-02 Edition)

care and handling would exceed the estimated proceeds from its sale. The abandonment or destruction finding must be sent to the appropriate GSA regional office for approval. You must include in the finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons; and

(5) The signature of the SASP director requesting approval for the abandonment or destruction.

(b) GSA will notify you within 30 calendar days whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction. If GSA doesn't reply to you within 30 calendar days of notification, the property may be abandoned or destroyed.

COOPERATIVE AGREEMENTS

§ 102-37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?

Section 203(n) of the Property Act (40 U.S.C. 484(n)) allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment

Federal Management Regulation

§ 102-37.350

needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see § 102-37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see § 102-37.305).

§ 102-37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

§ 102-37.335 May a SASP enter into a cooperative agreement with another SASP?

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate cooperative agreements may be considered when donees, because of their geographic proximity to the property dis-

tribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102-37.205(e).

§ 102-37.340 When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

AUDITS AND REVIEWS

§ 102-37.345 When must a SASP be audited?

For each year in which a SASP receives \$300,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501-7507) as implemented by Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

§ 102-37.350 Does coverage under the single audit process in OMB Circular A-133 exempt a SASP from other reviews of its program?

No, although SASPs are covered under the single audit process in OMB Circular A-133, from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

§ 102-37.355 What obligations does a SASP have to ensure that donees meet Circular A-133 requirements?

SASPs, if they donate \$300,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A-133. If a donee receives less than \$300,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

REPORTS

§ 102-37.360 What reports must a SASP provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090-0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

LIQUIDATING A SASP

§ 102-37.365 What steps must a SASP take if the State decides to liquidate the agency?

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

- (a) Reasons for the liquidation;
- (b) A schedule for liquidating the agency and the estimated date of termination;
- (c) Method of disposing of property on hand under the requirements of this part;
- (d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

§ 102-37.370 Do liquidation plans require public notice?

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

§ 102-37.375 How is the pronoun "you" used in this subpart?

The pronoun "you," when used in this subpart, refers to the State agency for surplus property (SASP).

§ 102-37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

(a) Subsection 203(j)(2) of the Property Act (40 U.S.C. 484(j)(2)) authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102-37 as service educational activities or SEAs).

(b) Subsection 203(j)(3) of the Property Act (40 U.S.C. 484(j)(3)) authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

- (1) Medical institutions.
- (2) Hospitals.
- (3) Clinics.
- (4) Health centers.
- (5) Drug abuse or alcohol treatment centers.

Federal Management Regulation

§ 102-37.395

(6) Providers of assistance to homeless individuals.

(7) Providers of assistance to impoverished families and individuals.

(8) Schools.

(9) Colleges.

(10) Universities.

(11) Schools for the mentally disabled.

(12) Schools for the physically disabled.

(13) Child care centers.

(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.

(15) Museums attended by the public.

(16) Libraries, serving free all residents of a community, district, State or region.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

DONEE ELIGIBILITY

§ 102-37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

§ 102-37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

(a) Conform to the definition of one of the categories of eligible entities

listed in § 102-37.380 (see appendix C of this part for definitions);

(b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;

(d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and

(e) Operate in compliance with applicable Federal nondiscrimination statutes.

§ 102-37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

(a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of

§ 102-37.400

Education, or by similar national advisory council or organization.

§ 102-37.400 What type of eligibility information must a SASP maintain on donees?

In general, you must maintain the records required by your State plan to document donee eligibility (see appendix B of this part). For SEAs, you must maintain separate records that include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property that are needed or have been authorized by DOD for use in the SEA's program.

§ 102-37.405 How often must a SASP update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually, you must update files for non-profit organizations whose eligibility depends on annual appropriations, annual licensing, or annual certification. Particular care must be taken to ensure that all records relating to the authority of donee representatives to receive and receipt for property, or to screen property at Federal facilities, are current.

§ 102-37.410 What must a SASP do if a donee fails to maintain its eligibility status?

If you determine that a donee has failed to maintain its eligibility status, you must terminate distribution of property to that donee, recover any usable property still under Federal restriction (as outlined in §102-37.465), and take any other required compliance actions.

§ 102-37.415 What should a SASP do if an applicant appeals a negative eligibility determination?

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and

41 CFR Ch. 102 (7-1-02 Edition)

recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters. GSA's decision will be final.

CONDITIONAL ELIGIBILITY

§ 102-37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

You may grant conditional eligibility to such an applicant provided it submits a statement from any required approving, accrediting, or licensing authority confirming it will be approved, accredited, or licensed.

§ 102-37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?

No, under no circumstances may you grant conditional eligibility prior to receiving from the applicant a copy of a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code.

§ 102-37.430 What property can a SASP make available to a donee with conditional eligibility?

You may only make available surplus property that the donee can use immediately. You may not make available property that will only be used at a later date, for example, after the construction of the donee's facility has been completed.

TERMS AND CONDITIONS OF DONATION

§ 102-37.435 For what purposes may donees acquire and use surplus property?

A donee may acquire and use surplus property only for the following authorized purposes:

(a) *Public purposes.* A public agency that acquires surplus property through a SASP must use such property to carry out or to promote one or more public purposes for the people it serves.

Federal Management Regulation

§ 102-37.450

(b) *Educational and public health purposes, including related research.* A non-profit educational or public health institution must use surplus property for education or public health, including research for either purpose and assistance to the homeless or impoverished. While this does not preclude the use of donated surplus property for a related or subsidiary purpose incident to the institution's overall program, the property may not be used for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* An entity that conducts a program for older individuals must use donated surplus property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102-37.440 May donees acquire property for exchange?

No, a donee may not acquire property with the intent to sell or trade it for other assets.

§ 102-37.445 What certifications must a donee make before receiving property?

Prior to a SASP releasing property to a donee, the donee must certify that:

(a) It is a public agency or a non-profit organization meeting the requirements of the Property Act and/or regulations of GSA;

(b) It is acquiring the property for its own use and will use the property for authorized purposes;

(c) Funds are available to pay all costs and charges incident to the donation;

(d) It will comply with the non-discrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and

(e) It isn't currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

§ 102-37.450 What agreements must a donee make?

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an "as is, where is" basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated

§ 102–37.455

41 CFR Ch. 102 (7–1–02 Edition)

property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

SPECIAL HANDLING OR USE CONDITIONS

§ 102–37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA

may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of \$5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For. . .	See. . .
(1) Policies and procedures governing the donation of aircraft parts.	Part 101–37, subpart 101–37.6, of this title.
(2) Documentation needed by GSA to process requests for aircraft or vessels.	§ 102–37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels.	§ 102–37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels.	§ 102–37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, in order to acquire the property. Include the BATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the SASP certifying that all Federal Government markings will be obliterated before use.

§ 102-37.460 What special terms and conditions apply to the donation of aircraft and vessels?

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102-37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for non-flight use, the donee must, within 30 calendar days of receipt of the aircraft, turn over to the SASP the remaining aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

RELEASE OF RESTRICTIONS**§ 102-37.465 May a SASP modify or release any of the terms and conditions of donation?**

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The terms and conditions you are required by the Property Act to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of \$5,000 or more.

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

(c) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased use of the property and that the proposed action meets the standards prescribed in your plan of operation.

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the

§ 102-37.470

property into use was beyond the control and without the fault or negligence of the donee.

(ii) Authority to trade in one donated item for one like item having similar use potential.

§ 102-37.470 At what point may restrictions be released on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of \$5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than \$5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102-37.475 What are the requirements for releasing restrictions on property being considered for exchange?

GSA must consent to the exchange of donated property under Federal restrictions or special handling conditions. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged must have remained in compliance with the terms and conditions of the donation. Otherwise, § 102-37.485 applies. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged; and

(b) Of equal or greater value than the item exchanged.

41 CFR Ch. 102 (7-1-02 Edition)

COMPLIANCE AND UTILIZATION

§ 102-37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?

You must conduct utilization reviews, as provided in your plan of operation, to ensure that donees are using surplus property during the period of restriction for the purposes for which it was donated. You must fully document your efforts and report all instances of noncompliance (misuse or mishandling of property) to GSA.

§ 102-37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?

If a review or other information indicates noncompliance with donation terms and conditions, you must:

(a) Promptly investigate any suspected failure to comply with the conditions of donated property;

(b) Notify GSA immediately where there is evidence or allegation of fraud, wrongdoing by a screener, or nonuse, misuse, or unauthorized disposal or destruction of donated property;

(c) Temporarily defer any further donations of property to any donee to be investigated for noncompliance allegations until such time as the investigation has been completed and:

(1) A determination made that the allegations are unfounded and the deferment is removed.

(2) The allegations are substantiated and the donee is proposed for suspension or debarment; and

(d) Take steps to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Enforcement of compliance may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

Federal Management Regulation

§ 102-37.515

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for property in cases where the property has been loaned or leased to an ineligible user or used for an unauthorized purpose.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102-37.490 When must a SASP coordinate with GSA on compliance actions?

You must coordinate with GSA before selling or demanding payment of the fair market or fair rental value of donated property that is:

(a) Subject to any special handling condition or use limitation imposed by GSA (see § 102-37.455); or

(b) Not properly used within 1 year of donation or which ceases to be properly used within 1 year of being placed in use.

§ 102-37.495 How must a SASP handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Enforcement of Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *Enforcement of State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

RETURNS AND REIMBURSEMENT

§ 102-37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial

cost of any repairs required to make the property usable if:

(a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;

(b) No breach of the terms and conditions of donation has occurred; and

(c) GSA authorizes the reimbursement.

§ 102-37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

SPECIAL PROVISIONS PERTAINING TO SEAs

§ 102-37.510 Are there special requirements for donating property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

§ 102-37.515 Do SEAs have a priority over other SASP donees for DOD property?

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

Subpart F—Donations to Public Airports

§ 102-37.520 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 41 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport purposes and GSA approves the donation.

§ 102-37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

§ 102-37.530 What are FAA's responsibilities in the donation of surplus property to public airports?

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

- (a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;
- (b) Setting eligibility requirements for public airports and making determinations of eligibility;
- (c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;
- (d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;
- (e) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use; and

(f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

- (1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.
- (2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.
- (3) Recovering any expired or invalid screener authorizations.

§ 102-37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

- (a) Provide copies of internal instructions that outline the scope of FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and
- (b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102-37.540 What is the authority for donations to the American National Red Cross?

Subsection 203(1) of the Property Act (40 U.S.C. 484(1)) authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

§ 102-37.545 What type of property may the American National Red Cross receive?

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

§ 102-37.550 What steps must the American National Red Cross take to acquire surplus property?

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

(a) Have 21 calendar days to inspect the property or request it without inspection; and

(b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

§ 102-37.555 What happens to property the American National Red Cross does not request?

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102-37.560 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102-37.565 What is the authority for donations to public bodies?

Subsection 202(h) of the Property Act (40 U.S.C. 483(h)) authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

§ 102-37.570 What type of property may a holding agency donate under this subpart?

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102-36 of this chapter) may be donated under this subpart. A holding agency may not donate property that requires destruction for health, safety, or security reasons. When disposing of haz-

ardous materials and other dangerous property, a holding agency must comply with all applicable laws and regulations and any special disposal requirements in part 101-42 of this title.

§ 102-37.575 Is there a special form for holding agencies to process donations?

There is no special form for holding agencies to process donations. A holding agency may use any document that meets its agency's needs for maintaining an audit trail of the transaction.

§ 102-37.580 Who is responsible for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (as defined in § 102-36.40 of this chapter), loading, and transportation to its site.

**APPENDIX A TO PART 102-37—
MISCELLANEOUS DONATION STATUTES**

The following is a listing of statutes which authorize donations which do not require GSA's approval:

Statute: 10 U.S.C. 2572.

Donor Agency: Any military department (Army, Navy, and Air Force) or the Coast Guard.

Type of Property: Books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat material.

Eligible Recipients: Municipal corporations; soldiers' monument associations; museums, historical societies, or historical institutions of a State or foreign nation; incorporated museums that are operated and maintained for educational purposes only and the charters of which denies them the right to operate for profit; posts of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association; local or national units of any war veterans' association of a foreign nation which is recognized by the national government of that nation or a principal subdivision of that nation; and posts of the Sons of Veterans Reserve.

Statute: 10 U.S.C. 7306.

Donor Agency: Department of the Navy.

Type of Property: Any vessel stricken from the Naval Vessel Register or any captured vessel in the possession of the Navy.

Eligible Recipients: States, Commonwealths, or possessions of the United States; the District of Columbia; and not-for-profit or non-profit entities.

Pt. 102–37, App. B

41 CFR Ch. 102 (7–1–02 Edition)

Statute: 10 U.S.C. 7541.

Donor Agency: Department of the Navy.

Type of Property: Obsolete material not needed for naval purposes.

Eligible Recipients: Sea scouts of the Boy Scouts of America; Naval Sea Cadet Corps; and the Young Marines of the Marine Corps League.

Statute: 10 U.S.C. 7545.

Donor Agency: Department of the Navy.

Type of Property: Captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models; other condemned or obsolete material, trophies, and flags; and other material of historic interest not needed by the Navy.

Eligible Recipients: States, territories, commonwealths, or possessions of the United States, or political subdivisions or municipal corporations thereof; the District of Columbia; libraries; historical societies; educational institutions whose graduates or students fought in World War I or World War II;

soldiers' monument associations; State museums; museums operated and maintained for educational purposes only, whose charter denies it the right to operate for profit; posts of the Veterans of Foreign Wars of the United States; American Legion posts; recognized war veterans' associations; or posts of the Sons of Veterans Reserve.

Statute: 14 U.S.C. 641(a).

Donor Agency: Coast Guard.

Type of Property: Obsolete or other material not needed for the Coast Guard.

Eligible Recipients: Coast Guard Auxiliary; sea scout service of the Boy Scouts of America; and public bodies or private organizations not organized for profit.

APPENDIX B TO PART 102–37—ELEMENTS OF A STATE PLAN OF OPERATION

The following is the information and assurances that must be included in a SASP's plan of operation:

STATE PLAN REQUIREMENTS

Regarding . . .	The plan must . . .
(a) Designation of a SASP	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property. (4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees. (5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated. (6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities. (7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it. (8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.
(f) Terms and conditions on donated property.	(1) Require the SASP to identify terms and conditions that will be imposed on the donee for any item of donated property with a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. (2) Provide that the SASP may impose reasonable terms and conditions on the use of other donated property. If the SASP elects to impose additional terms and conditions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms or conditions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases. (3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.
(g) Nonutilized or undistributed property.	Provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by: (1) Transfer to another SASP or Federal agency. (2) Sale. (3) Abandonment or destruction. (4) Other arrangements.
(h) Fair and equitable distribution ...	(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property. (2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. (3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.
(i) Eligibility	(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property. (2) Provide for donee eligibility records to include at a minimum: (i) Legal name and address of the donee. (ii) Status of the donee as a public agency or as an eligible nonprofit activity. (iii) Details on the scope of the donee's program. (iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit. (v) Proof that the donee is approved, accredited, licensed, or meets any other legal requirement for operation of its program(s). (vi) Financial information. (vii) Written authorization by the donee's governing body or chief administrative officer designating at least one person to act for the donee in acquiring property. (viii) Assurance that the donee will comply with GSA's regulations on nondiscrimination. (ix) Types of property needed.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(j) Compliance and utilization	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups.	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of surplus property by eligible donees, and how distribution of surplus property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.
(m) Cooperative agreements	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms	Include copies of distribution documents used by the SASP.
(p) Records	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

APPENDIX C—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

Accreditation means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for univer-

sities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed

by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

Educational radio or television station means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

Health center means an approved public or nonprofit facility that provides public health

services, including related facilities such as diagnostic and laboratory facilities and clinics.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

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

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution*.

Museum means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nationally recognized accrediting agency means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at <http://www.ed.gov/offices/OPE/accreditation/index.html>)

Nonprofit means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

Provider of assistance to homeless individuals means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or nonprofit organization whose primary function is to provide money, goods, or services to families

or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

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

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

Federal Management Regulation

§ 102-39.15

- (1) Public police departments.
- (2) Sheriffs' offices.
- (3) The courts.
- (4) Penal and correctional institutions (including juvenile facilities).
- (5) State and local civil defense organizations.
- (6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

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

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

PART 102-38— [RESERVED]

PART 102-39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Subpart A—General

Sec.

- 102-39.5 How are the terms “I” and “you” used in this part?
- 102-39.10 What does this part cover?
- 102-39.15 Why should I use the exchange/sale authority?
- 102-39.20 What definitions apply to this part?
- 102-39.25 How do I request a deviation from this part?

Subpart B—Exchange/Sale Considerations

- 102-39.30 When should I not use the exchange/sale authority?
- 102-39.35 How do I determine whether to do an exchange or a sale?

102-39.40 When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?

102-39.45 What prohibitions apply to the exchange/sale of personal property?

102-39.50 What conditions apply to the exchange/sale of personal property?

102-39.55 What exceptions apply to the conditions for exchange/sale in § 102-39.50?

Subpart C—Exchange/Sale Methods and Reports

102-39.60 What are the exchange methods?

102-39.65 What are the sales methods?

102-39.70 What are the accounting requirements for the proceeds of sale?

102-39.75 What information am I required to report?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 48614, Sept. 21, 2001, unless otherwise noted.

Subpart A—General

§ 102-39.5 How are the terms “I” and “you” used in this part?

Use of pronouns “I” and “you” throughout this part refer to executive agencies.

§ 102-39.10 What does this part cover?

This part covers the exchange/sale authority, and applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101-37 and 101-42 of this title.

§ 102-39.15 Why should I use the exchange/sale authority?

You should use the exchange/sale authority to:

- (a) Reduce the cost of replacement personal property. If you have personal property that needs to be replaced, you can exchange or sell that property and apply the exchange allowance or sales proceeds to reduce the cost of similar replacement property. By contrast, if you choose not to replace the property using the exchange/sale authority, you may declare it excess and dispose of it through the normal disposal process. Any sales proceeds from the eventual

sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you.

(b) Avoid costs (*e.g.*, administrative and storage) that may be incurred when declaring the property to be replaced as excess and processing it through the normal disposal process. The normal disposal process may include abandonment or destruction, reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, or sale to the public. The time required to determine which of these options will apply and to complete the disposal transaction is likely to exceed the time required for an exchange/sale transaction.

§ 102-39.20 What definitions apply to this part?

The following definitions apply to this part:

Acquire means to procure or otherwise obtain personal property, including by lease.

Combat material means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

Exchange means to replace personal property by trade or trade-in with the supplier of the replacement property.

Exchange/sale means to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

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

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

Historic item means property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are com-

monly 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.

Replacement means the process of acquiring property to be used in place of property that is still needed but:

(1) No longer adequately performs the tasks for which it is used; or

(2) Does not meet the agency's need as well as the property to be acquired.

Similar means where the acquired item and replaced item:

(1) Are identical;

(2) Are designed and constructed for the same purpose;

(3) Constitute parts or containers for identical or similar end items; or

(4) Fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 102-39.25 How do I request a deviation from this part?

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

Subpart B—Exchange/Sale Considerations

§ 102-39.30 When should I not use the exchange/sale authority?

You should not use the exchange/sale authority if the exchange allowance or estimated sales proceeds for the property will be unreasonably low. You must either abandon or destroy such property in accordance with part 101-45, subpart 101-45.9, of this title, or declare the property excess and follow the regulations in part 102-36 of this chapter, whichever is appropriate. Further, you must not use the exchange/sale authority if the transaction(s) would violate any other applicable statute or regulation.

§ 102-39.35 How do I determine whether to do an exchange or a sale?

You must determine whether an exchange or sale will provide the greater return for the Government. When estimating the return under each method, consider all related administrative and overhead costs.

Federal Management Regulation

§ 102-39.45

§ 102-39.40 When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?

If you have property to replace which is eligible for exchange/sale, you should first, to the maximum extent practicable, solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

(1) Do so under terms mutually agreeable to you and the recipient.

(2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.

(3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

(b) State Agencies for Surplus Property (SASPs) known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price under the conditions specified at §101-45.304-12 of this title. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

§ 102-39.45 What prohibitions apply to the exchange/sale of personal property?

You must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

- 10 Weapons.
- 11 Nuclear ordnance.
- 12 Fire control equipment.
- 14 Guided missiles.
- 15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).

42 Firefighting, rescue, and safety equipment.

44 Nuclear reactors (FSC Class 4472 only).

51 Hand tools.

54 Prefabricated structure and scaffolding.

68 Chemicals and chemical products, except medicinal chemicals.

84 Clothing, individual equipment, and insignia.

NOTE TO §102-39.45(A): The exception to the prohibition is Department of Defense (DOD) property in FSC Groups 10, 12, and 14 (except FSC Class 1005) for which the applicable DOD demilitarization requirements, and any other applicable regulations and statutes are met.

(b) Materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(c) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of §101-42.1102-4 of this title.

(d) Controlled substances, unless you meet the requirements of §101-42.1102-3 of this title.

(e) Scrap materials, except in the case of scrap gold for fine gold.

(f) Property that was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(g) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Department of Defense Demilitarization Office.

(i) Flight Safety Critical Aircraft Parts unless you meet the provisions of §101-37.610 of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

§ 102-39.50

- (1) Restriction on procurement of a commodity or commodities;
- (2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or
- (3) Contractual obligation.

(1) Vessels subject to 40 U.S.C. 484(i).

[66 FR 48614, Sept. 21, 2001; 66 FR 51095, Oct. 5, 2001]

§ 102-39.50 What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

- (a) The property exchanged or sold is similar to the property acquired;
- (b) The property exchanged or sold is not excess or surplus, and you have a continuing need for that type of property;
- (c) The number of items acquired must equal the number of items exchanged or sold unless:
 - (1) 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
 - (2) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified in §102-39.20 that they are a part(s) or container(s) for identical or similar end items;
- (d) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and
- (e) You document at the time of exchange or sale (or at the time of acquiring the replacement property if it precedes the sale) that the exchange allowance or sale proceeds will be applied to the acquisition of replacement property.

§ 102-39.55 What exceptions apply to the conditions for exchange/sale in § 102-39.50?

The exceptions that apply to the conditions for exchange/sale §102-39.50 are:

- (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

41 CFR Ch. 102 (7-1-02 Edition)

items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart C—Exchange/Sale Methods and Reports

§ 102-39.60 What are the exchange methods?

Exchange of property may be accomplished by either of the following methods:

- (a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit.
- (b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

§ 102-39.65 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 title in the sale of property being replaced, except for the provisions of §101-45.304-2(a) of this title regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

- (1) The reasonable value involved in the contract does not exceed \$500; or
 - (2) Otherwise authorized by law.
- (b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of §101-45.304-2(b) of this title.

§ 102-39.70 What are the accounting requirements for the proceeds of sale?

You must account for sales proceeds in accordance with the general finance

Federal Management Regulation

§ 102-39.75

and accounting rules applicable to you. Except as otherwise directed by law, all proceeds from the sale of personal property under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for obligation for the purchase of replacement property. Any sales proceeds not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

§ 102-39.75 What information am I required to report?

(a) You must submit, within 90 calendar days after the close of each fiscal year, a summary report in a format of your choice on the exchange/sale transactions made under this part during the fiscal year (except for transactions involving books and periodicals in your libraries). The report must include:

(1) A list by Federal Supply Classification Group of property sold under this part showing the:

- (i) Number of items sold;
- (ii) Acquisition cost; and
- (iii) Net proceeds.

(2) A list by Federal Supply Classification Group of property exchanged under this part showing the:

- (i) Number of items exchanged;
- (ii) Acquisition cost; and
- (iii) Exchange allowance.

(b) Submit your report electronically or by mail to the General Services Administration, Personal Property Management Policy Division (MTP), 1800 F St. NW., Washington, DC 20405.

(c) Report control number: 1528-GSA-AN.

(d) If you make no transactions under this part during a fiscal year, you must submit a report stating that no transactions occurred.

PARTS 102-40— and 102-41 [RESERVED]

PART 102-42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Subpart A—General Provisions

Sec.

102-42.5 What does this part cover?

DEFINITIONS

102-42.10 What definitions apply to this part?

CARE, HANDLING AND DISPOSITION

102-42.15 Under what circumstances may an employee retain a foreign gift or decoration?

102-42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

102-42.25 Who retains custody of gifts and decorations pending disposal?

102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

102-42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

APPRAISALS

102-42.40 When is a commercial appraisal necessary?

102-42.45 Who obtains a commercial appraisal?

102-42.50 Is there a special format for a commercial appraisal?

102-42.55 What does the employing agency do with the appraisal?

SPECIAL DISPOSALS

102-42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?

102-42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

102-42.70 Who handles gifts and decorations received by the President or a member of the President's family?

102-42.75 How are gifts containing hazardous materials handled?

Subpart B—Utilization of Foreign Gifts and Decorations

102-42.80 To whom do “we”, “you”, and their variants refer?

102-42.85 What gifts or decorations must we report to GSA?

102-42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

102-42.95 How do we report gifts and decorations as excess personal property?

102-42.100 How can we obtain an excess gift or decoration from another agency?

102-42.105 What special information must be included on the transfer request (SF 122)?

102-42.110 How must we justify a transfer request?

102-42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

Subpart C—Donation of Foreign Gifts and Decorations

- 102-42.120 When may gifts or decorations be donated to State agencies?
 102-42.125 How is donation of gifts or decorations accomplished?
 102-42.130 Are there special requirements for the donation of gifts and decorations?

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

- 102-42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?
 102-42.140 How is a sale of a foreign gift or decoration to an employee conducted?
 102-42.145 When is public sale of a foreign gift or decoration authorized?
 102-42.150 What happens to proceeds from sales?
 102-42.155 Can foreign gifts or decorations be destroyed?

AUTHORITY: 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.

Subpart A—General Provisions

§ 102-42.5 What does this part cover?

This part covers the acceptance, utilization, donation, and disposal of gifts and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government you should refer to § 102-36.405.

DEFINITIONS

§ 102-42.10 What definitions apply to this part?

The following definitions apply to this part:

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

- (1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;
- (2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section,

any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition of *employee* (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of *employee*.

Employing agency means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

Foreign government means:

(1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;

Federal Management Regulation

§ 102-42.25

(2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and

(3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

Minimal value means a retail value in the United States at the time of acceptance of \$260 or less, except that:

(1) GSA will adjust the definition of *minimal value* in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(2) Regulations of an employing agency may define *minimal value* for its employees to be less, but not more than, the value provided under this definition.

CARE, HANDLING AND DISPOSITION

§ 102-42.15 Under what circumstances may an employee retain a foreign gift or decoration?

Employees, with the approval of their employing agencies, may accept and retain:

(a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property of the U.S. Government, not the employee, and must be reported.

(b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

§ 102-42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

(1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.

(2) The employing agency determines if it will keep the gift or decoration for official use.

(3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under § 102-42.95.

(4) If GSA does not transfer the gift or decoration during

Federal utilization screening, the employee may purchase the gift or decoration (see § 102-42.140).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under part 101-44 of this title.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under part 101-45 of this title.

(b) *Monetary gifts.* When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or

(ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

§ 102-42.25 Who retains custody of gifts and decorations pending disposal?

(a) The employing agency retains custody of gifts and decorations that

§ 102-42.30

employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which employees decline to purchase, or decorations that are not retained for official use or returned to donors.

NOTE TO §102-42.25(B): GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101-42 of this title.

§ 102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

§ 102-42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

No, all transfers of gifts and decorations to Federal agencies or donation through SASPs will be without reimbursement. However, the employing agency may require the receiving agency to pay all or part of the direct costs incurred by the employing agency in packing, preparation for shipment, loading, and transportation.

APPRAISALS

§ 102-42.40 When is a commercial appraisal necessary?

(a) A commercial appraisal is necessary when an employee indicates an interest in purchasing a gift or decoration and must be obtained before the gift or decoration is reported to GSA for screening.

(b) GSA may also require the employing agency to obtain a commercial appraisal of a gift or decoration that the agency no longer needs before accepting the agency's report of the item as excess personal property.

§ 102-42.45 Who obtains a commercial appraisal?

The employing agency obtains a commercial appraisal.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-42.50 Is there a special format for a commercial appraisal?

There is no special format for a commercial appraisal, but it must be:

- (a) On official company letterhead;
- (b) Prepared in the United States;
- (c) Dated; and
- (d) Expressed in U.S. dollars.

§ 102-42.55 What does the employing agency do with the appraisal?

The employing agency must attach the commercial appraisal to a Standard Form (SF) 120, Report of Excess Personal Property.

SPECIAL DISPOSALS

§ 102-42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Commission on Art and Antiquities of the United States Senate under 5 U.S.C. 7342(e)(2). GSA is responsible for disposing of gifts or decorations received by Members and employees of the House of Representatives.

§ 102-42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

If the Commission on Art and Antiquities does not dispose of a gift or decoration, then it must be reported to GSA for disposal. If GSA does not dispose of a gift or decoration within one year of the Commission's reporting, the Commission may:

- (a) Request that GSA return the gift or decoration and dispose of it itself; or
- (b) Continue to allow GSA to dispose of the gift or decoration in accordance with this part.

§ 102-42.70 Who handles gifts and decorations received by the President or a member of the President's family?

The National Archives and Records Administration normally handles gifts and decorations received by the President or a member of the President's family.

Federal Management Regulation

§ 102-42.95

§ 102-42.75 How are gifts containing hazardous materials handled?

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 101-42 of this title.

Subpart B—Utilization of Foreign Gifts and Decorations

§ 102-42.80 To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the employing agency.

§ 102-42.85 What gifts or decorations must we report to GSA?

You must report to GSA gifts of more than minimal value, except for monetary gifts that have no historic or numismatic value (see § 102-42.20), or decorations the employee is not authorized to retain that are:

(a) Not being retained for official use or have not been returned to the donor; or

(b) Received by a Senator or a Senate employee and not disposed of by the Commission on Art and Antiquities of the United States Senate.

§ 102-42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

Non-monetary gifts or decorations that were retained for official use must be reported to GSA as excess property within 30 days after termination of the official use.

§ 102-42.95 How do we report gifts and decorations as excess personal property?

You must complete a Standard Form (SF) 120, Report of Excess Personal Property, and send it to the General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 120, “FOREIGN GIFTS AND/OR DECORATIONS”, and include the following information:

Entry	Description
(a) Identity of Employee.	Give the name and position of the employee.
(b) Description of Item.	Give a full description of the gift or decoration, including the title of the decoration.
(c) Identity of Foreign Government.	Give the identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration.
(d) Date of Acceptance.	Give the date the gift or decoration was accepted by the employee.
(e) Appraised Value	Give the appraised value in United States dollars of the gift or decoration, including the cost of the appraisal. (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.)
(f) Current Location of Item.	Give the current location of the gift or decoration.
(g) Employing Agency Contact Person.	Give the name, address, and telephone number of the accountable official in the employing agency.

Entry	Description
(h) Purchase Interest or Donation Recommendation.	Indicate whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee.
(i) Administration ..	Give the Administration in which the gift or decoration was received (for example, Clinton Administration).
(j) Multiple Items ...	Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (for example, a tea set, a necklace and matching earrings) as a single line item.

§ 102-42.100 How can we obtain an excess gift or decoration from another agency?

To obtain an excess gift or decoration from another agency, you would complete a Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, for the desired item(s) and submit the form to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

§ 102-42.105 What special information must be included on the SF 122?

Conspicuously mark the SF 122, "FOREIGN GIFTS AND/OR DECORATIONS", and include all information furnished by the employing agency as specified in § 102-42.95. Also, include on the form the following statement: "At such time as these items are no longer required, they will be reported to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, and will be identified as foreign gift items and cross-referenced to this transfer order number."

§ 102-42.110 How must we justify a transfer request?

You may only request excess gifts and decorations for public display or other bona fide agency use and not for the personal benefit of any individual. GSA may require that transfer orders

be supported by justifications for the intended display or official use of requested gifts and decorations. Jewelry and watches that are transferred for official display must be displayed with adequate provisions for security.

§ 102-42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

When transferred gifts and decorations are no longer required for official use, report these gifts and decorations to the GSA as excess property on a SF 120, including the original transfer order number or a copy of the original transfer order.

Subpart C—Donation of Foreign Gifts and Decorations

§ 102-42.120 When may gifts or decorations be donated to State agencies?

If there is no Federal requirement for the gifts or decorations, and if gifts were not sold to the employee, GSA may make the gifts or decorations available for donation to State agencies under this subpart and part 101-44 of this title.

§ 102-42.125 How is donation of gifts or decorations accomplished?

The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (e.g., units of State or local governments

and eligible non-profit organizations) by:

(a) Completing a Standard Form (SF) 123, Transfer Order Surplus Personal Property, and submitting it to General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 123 with the words, "FOREIGN GIFTS AND/OR DECORATIONS."

(b) Attaching an original and two copies of a letter of intent to each SF 123 submitted to GSA. An authorized representative of the proposed donee must sign and date the letter, setting forth a detailed plan for use of the property. The letter of intent must provide the following information:

(1) Identifying the donee applicant, including its legal name and complete address, its status as a public agency or as an eligible nonprofit tax-exempt activity, and the name, title, and telephone number of its authorized representative;

(2) A description of the gift or decoration requested, including the gift's commercially appraised value or estimated fair market value if no commercial appraisal was performed; and

(3) Details on the planned use of the gift or decoration, including where and how it will be used and how it will be safeguarded.

§ 102-42.130 Are there special requirements for the donation of gifts and decorations?

Yes, GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or incorporate by reference the following:

(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) There must be a period of restriction which will expire after the gift or decoration has been used for the purpose stated in the letter of intent for a period of 10 years, except that GSA may restrict the use of the gift or decoration for such other period when the inherent character of the property justifies such action.

(c) The donee must allow the right of access to the donee's premises at reasonable times for inspection of the gift or decoration by duly authorized rep-

resentatives of the SASP or the U.S. Government.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Do or allow anything to be done that would contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the period of restriction, the donee must promptly notify the General Services Administration, Property Management Division (FBP), Washington, DC 20406, through the SASP, and upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP, and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the period of restriction, the SASP may demand return of the gift or decoration and, upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay to the U.S. Government the fair market value of the gift or decoration at the time of its loss, theft, or at the time that it became unrecoverable as determined by GSA. If

§ 102-42.135

the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

§ 102-42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?

The Secretary of State or the Secretary's designee must approve any sale of foreign gifts or decorations (except sale of foreign gifts to the employee, that is approved in this part).

§ 102-42.140 How is a sale of a foreign gift or decoration to an employee conducted?

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the com-

41 CFR Ch. 102 (7-1-02 Edition)

mercially appraised value of the gift plus the cost of the appraisal. Sales must be conducted and documented in accordance with part 101-45 of this title.

§ 102-42.145 When is public sale of a foreign gift or decoration authorized?

A public sale is authorized if a foreign gift or decoration:

- (a) Survives Federal utilization screening;
- (b) Is not purchased by the employee;
- (c) Survives donation screening; and
- (d) Is approved by the Secretary of State or designee.

§ 102-42.150 What happens to proceeds from sales?

The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

§ 102-42.155 Can foreign gifts or decorations be destroyed?

Yes, foreign gifts or decorations that are not sold under this part may be destroyed and disposed of as scrap or for their material content under part 101-45 of this title.

SUBCHAPTER C—REAL PROPERTY

PART 102-71—GENERAL

Sec.

102-71.5 What are the scope and philosophy of the General Services Administration's (GSA) real property policies?

102-71.10 How are these policies organized?

102-71.15 What happens if the policy statements in this part and parts 102-72 through 102-82 of this chapter conflict with policy statements in 41 CFR parts 101-6, 101-17 through 101-20, 101-33, and 101-47?

102-71.20 What definitions apply to GSA's real property policies?

102-71.25 Who must comply with GSA's real property policies?

102-71.30 How must these real property policies be implemented?

102-71.35 Are agencies allowed to deviate from GSA's real property policies?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-71.5 What are the scope and philosophy of the General Services Administration's (GSA) real property policies?

GSA's real property policies contained in this part and parts 102-72 through 102-82 of this chapter apply to Federal agencies, including the GSA/ Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. These policies cover the acquisition, management, and utilization and disposal of real property by Federal agencies that initiate and have decisionmaking authority over actions for real property services. The detailed guidance implementing these policies is contained in separate customer service guides.

§ 102-71.10 How are these policies organized?

GSA has divided its real property policies into the following functional areas:

- (a) Delegation of authority;
- (b) Real estate acquisition;
- (c) Facility management;
- (d) Real property disposal;
- (e) Design and construction;
- (f) Art-in-architecture;

- (g) Historic preservation;
- (h) Assignment and utilization of space;
- (i) Safety and environmental management;
- (j) Security; and
- (k) Utility services.

§ 102-71.15 What happens if the policy statements in this part and parts 102-72 through 102-82 of this chapter conflict with policy statements in 41 CFR parts 101-6, 101-17 through 101-20, 101-33, and 101-47?

The policies in this part and parts 102-72 through 102-82 of this chapter apply to 41 CFR parts 101-17 through 101-20, 101-33, and 101-47. To the extent that any policy statements elsewhere in 41 CFR parts 101-17 through 101-20, 101-33, and 101-47 are inconsistent with the policy statements in this part and parts 102-72 through 102-82 of this chapter, the policy statements in this chapter are controlling.

§ 102-71.20 What definitions apply to GSA's real property policies?

The following definitions apply to GSA's real property policies:

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

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

Federal Government real property services provider means any Federal Government entity operating under, or subject to, the authorities of the Administrator of General Services, that provides real property services to Federal agencies. This definition also includes private sector firms under contract with Federal agencies that deliver real property services to Federal agencies. This definition excludes any entity operating under, or subject to, authorities other than those of the Administrator of General Services.

§ 102-71.25

Public building means:

(1) Any building which is suitable for office and/or storage space for the use of one or more Federal agencies or mixed ownership corporations, such as Federal office buildings, post offices, customhouses, courthouses, border inspection facilities, warehouses, and any such building designated by the President. It also includes buildings of this sort that are acquired by the Federal Government under the Administrator's installment-purchase, lease-purchase, and purchase-contract authorities.

(2) *Public building* does not include buildings:

- (i) On the public domain.
- (ii) In foreign countries.
- (iii) On Indian and native Eskimo properties held in trust by the United States.
- (iv) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes.
- (v) On or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects.
- (vi) On or used in connection with housing and residential projects.
- (vii) On military installations.
- (viii) On Department of Veteran's Affairs' installations used for hospital or domiciliary purposes.
- (ix) Excluded by the President.

§ 102-71.25 Who must comply with GSA's real property policies?

Federal agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these policies.

§ 102-71.30 How must these real property policies be implemented?

Each Federal Government real property services provider must provide services that are in accord with the policies presented in parts 102-71 through 102-82 of this chapter. Also, Federal agencies must make the provisions of any contract with private sector real property services providers conform to the policies in parts 102-71 through 102-82 of this chapter.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-71.35 Are agencies allowed to deviate from GSA's real property policies?

Yes, see §§102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of these real property policies.

PART 102-72—DELEGATION OF AUTHORITY

Sec.

- 102-72.5 What is the scope of this part?
- 102-72.10 What basic policy governs delegation of authority to Federal agencies?
- 102-72.15 What criteria must a delegation meet?
- 102-72.20 Are there limitations on this delegation of authority?
- 102-72.25 What are the different types of delegations of authority?
- 102-72.30 What are the different types of delegations related to real estate leasing?
- 102-72.35 What are the requirements for obtaining an ACO delegation from GSA?
- 102-72.40 What are facility management delegations?
- 102-72.45 What are the different types of delegations related to facility management?
- 102-72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?
- 102-72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?
- 102-72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?
- 102-72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?
- 102-72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?
- 102-72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?
- 102-72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?
- 102-72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?
- 102-72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

Federal Management Regulation

§ 102-72.35

102-72.95 What are the requirements for obtaining a security delegation of authority from GSA?

102-72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?

102-72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

AUTHORITY: 40 U.S.C. 486(c), (d) and (e).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-72.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-72.10 What basic policy governs delegation of authority to Federal agencies?

The Administrator of General Services may delegate and may authorize successive redelegations of the real property authority vested in the Administrator to any Federal agency.

§ 102-72.15 What criteria must a delegation meet?

Delegations must be in the Government's best interest, which means that GSA must evaluate such factors as whether a delegation would be cost effective for the Government in the delivery of space.

§ 102-72.20 Are there limitations on this delegation of authority?

Federal agencies must exercise delegated real property authority and functions according to the parameters described in each delegation of authority document, and Federal agencies may only exercise the authority of the Administrator that is specifically provided within the delegation of authority document.

§ 102-72.25 What are the different types of delegations of authority?

The basic types of GSA Delegations of Authority are:

- (a) Delegation of Leasing Authority;
- (b) Delegation of Real Property Management and Operation Authority;

(c) Delegation of Individual Repair and Alteration Project Authority;

(d) Delegation of Lease Management Authority (Contracting Office Representative Authority);

(e) Delegation of Administrative Contracting Officer (ACO) Authority;

(f) Delegation of Real Property Disposal Authority;

(g) Security Delegation of Authority; and

(h) Utility Services Delegation of Authority.

§ 102-72.30 What are the different types of delegations related to real estate leasing?

Delegations related to real estate leasing include the following:

(a) Categorical space delegations, Agency special purpose space delegations, and delegations to specific agencies for certain space and lands outside urban areas (see § 101-18.104 of this title).

(b) The Administrator of General Services has issued a standing delegation of authority (under a program known as "Can't Beat GSA Leasing") to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years regardless of geographic location. This delegation includes some conditions Federal agencies must meet when conducting the procurement themselves, such as training in lease contracting and reporting data to GSA.

(c) An Administrative Contracting Officer (ACO) delegation, in addition to lease management authority, provides Federal agencies with limited contracting officer authority to perform such duties as paying and withholding lessor rent and modifying lease provisions that don't change the lease term length or the amount of space under lease.

§ 102-72.35 What are the requirements for obtaining an ACO delegation from GSA?

When Federal agencies don't exercise the delegation of authority for general purpose space mentioned in § 102-72.30(b), GSA may consider granting an ACO delegation when Federal agencies:

- (a) Occupy at least 90 percent of the building's GSA-controlled space or

§ 102-72.40

Federal agencies have the written concurrence of 100 percent of rent-paying occupants covered under the lease; and

(b) Have the technical capability to perform the leasing function.

§ 102-72.40 What are facility management delegations?

Facility management delegations give Executive agencies authority to operate and manage buildings day to day, to perform individual repair and alteration projects and manage real property leases.

§ 102-72.45 What are the different types of delegations related to facility management?

The principal types of delegations involved in the management of facilities are:

- (a) Real property management and operation authority;
- (b) Individual repair and alteration project authority; and
- (c) Lease management authority (contracting officer representative authority).

§ 102-72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?

With this delegation, Executive agencies have the authority to operate and manage buildings day to day. Delegated functions may include building operations, maintenance, recurring repairs, minor alterations, historic preservation, concessions, and energy management of specified buildings subject to the conditions in the delegation document.

§ 102-72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?

An Executive agency may be delegated real property management and operation authority when it:

- (a) Occupies at least 90 percent of the space in the Government-controlled facility or has the concurrence of 100 percent of the rent-paying occupants to perform these functions; and
- (b) Demonstrates that it can perform the delegated real property management and operation responsibilities.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?

With this delegation of authority, Executive agencies have the responsibility to perform individual repair and alterations projects. Executive agencies are delegated repair and alterations authority for reimbursable space alteration projects up to the simplified acquisition threshold, under § 101-20.106 of this title.

§ 102-72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?

Executive agencies may be delegated repair and alterations authority for other individual alteration projects when they demonstrate the ability to perform the delegated repair and alterations responsibilities and when such a delegation promotes efficiency and economy.

§ 102-72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?

When an Executive agency does not exercise the delegation of authority mentioned in § 102-72.30(b) to lease general purpose space itself, it may be delegated, upon request, lease management authority to manage the administration of one or more lease contracts awarded by GSA.

§ 102-72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?

An Executive agency may be delegated lease management authority when it:

- (a) Occupies at least 90 percent of the building's GSA-controlled space or has the written concurrence of 100 percent of rent-paying occupants covered under the lease to perform this function; and
- (b) Demonstrates the ability to perform the delegated lease management responsibilities.

§ 102-72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?

With this delegation, Executive agencies have the authority to utilize and dispose of excess or surplus real and related personal property and to grant approvals and make determinations subject to the conditions in the delegation document.

§ 102-72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?

While disposal delegations to Executive agencies are infrequent, GSA may delegate authority to them based on situations involving certain low-value properties and when they can demonstrate that they have the technical expertise to perform the disposition functions. GSA may grant special delegations of authority to Executive agencies for the utilization and disposal of certain real property through the procedures set forth in part 101-47, subpart 101-47.6, of this title.

§ 102-72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

With a security delegation, Executive agencies have the authority and responsibility to protect persons and property at the locations identified in the delegation document.

§ 102-72.95 What are the requirements for obtaining a security delegation of authority from GSA?

Executive agencies may be delegated security authority when any of the following conditions exist:

- (a) A clear and unique security requirement;
- (b) A critical national security issue;
- (c) An intelligence or law enforcement mission; or
- (d) The current security contractor is ineffective.

§ 102-72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?

With this delegation, Executive agencies have the authority to negotiate

and execute utility services contracts for periods over one year but not exceeding ten years for their use and benefit. Agencies also have the authority to intervene in utility rate proceedings to represent the consumer interests of the Federal Government, if so provided in the delegation of authority.

§ 102-72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

Executive agencies may be delegated utility services authority when they have the technical expertise and adequate staffing.

PART 102-73—REAL ESTATE ACQUISITION

Sec.

102-73.5 What is the scope of this part?

102-73.10 What is the basic real estate acquisition policy?

102-73.15 What real estate acquisition and related services must Federal agencies provide?

102-73.20 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

102-73.25 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

102-73.30 On what basis must Federal agencies acquire leases?

102-73.35 Are Executive agencies required to acquire leased space by negotiation?

102-73.40 Is the CICA applicable to lease acquisition?

102-73.45 What policy must Executive agencies comply with in locating Federal facilities?

102-73.50 What historic preservation provisions must Federal agencies comply with when acquiring space by lease?

102-73.55 With whom may Federal agencies enter into lease agreements?

102-73.60 Are there any limitations on leasing certain space?

102-73.65 When may Federal agencies consider acquiring leases with purchase options?

102-73.70 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

102-73.75 When may Federal agencies consider purchase of buildings?

102-73.80 What factors must Executive agencies consider when purchasing sites?

102-73.85 What land acquisition policy must Federal agencies follow?

§ 102-73.5

102-73.90 What relocation assistance policy must Federal agencies follow?

102-73.95 Is a prospectus required for all acquisition, construction or alteration projects?

102-73.100 What happens if the project exceeds the prospectus threshold?

AUTHORITY: 40 U.S.C. 486(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note); Sec. 1-201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-73.10 What is the basic real estate acquisition policy?

If suitable Government-controlled space is unavailable, Executive agencies must acquire real estate and related services in an efficient and cost effective manner.

§ 102-73.15 What real estate acquisition and related services must Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate and related services, including leases (with and without purchase options), building purchase, purchase of sites, condemnation, and relocation assistance.

§ 102-73.20 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

Federal agencies may consider leases of privately owned land and buildings only when needs cannot be satisfactorily met in Government-controlled space and one or more of the following conditions exist:

(a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building;

(b) New construction or alteration is unwarranted because demand for space in the community is insufficient, or is indefinite in scope or duration; or

41 CFR Ch. 102 (7-1-02 Edition)

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

§ 102-73.25 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Yes, after considering the availability of GSA-controlled space, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs.

§ 102-73.30 On what basis must Federal agencies acquire leases?

Federal agencies must acquire leases on the most favorable basis to the Federal Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community.

§ 102-73.35 Are Executive agencies required to acquire leased space by negotiation?

Yes, Executive agencies must acquire leased space by negotiation, except where the sealed bid procedure is required by the Competition in Contracting Act of 1984 (CICA), as amended (41 U.S.C. 253(a)). See also 40 U.S.C. 618(b) with respect to the use of competitive procedures for the acquisition of leaseholds in buildings constructed for Federal Government use.

§ 102-73.40 Is the CICA applicable to lease acquisition?

Yes, Executive agencies must obtain full and open competition among suitable locations meeting minimum Government requirements, except as otherwise provided by CICA.

§ 102-73.45 What policy must Executive agencies comply with in locating Federal facilities?

When acquiring space by lease, Executive agencies must comply with the location policies in §101-17.205 and §102-79.90 (E.O. 13006 (61 FR 26071, 3 CFR, 1996 Comp., p. 195)) of this title.

Federal Management Regulation

§ 102-73.80

§ 102-73.50 What historic preservation provisions must Federal agencies comply with when acquiring space by lease?

When acquiring space by lease, Federal agencies must comply with the provisions of section 110(a) of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470h-2(a)), regarding the use of historic properties.

§ 102-73.55 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, copartnership, corporation, or other public or private entity, which do not bind the Government for periods in excess of twenty years (40 U.S.C. 490(h)(1)). This policy does not include persons who might otherwise be barred from contracting with the Federal Government (*e.g.*, debarred or suspended contractors or Members of Congress).

§ 102-73.60 Are there any limitations on leasing certain space?

Yes, the limitations on leasing certain space are as follows:

(a) In general, Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average annual net rental cost of leasing such space would exceed the prospectus threshold (40 U.S.C. 606(e)).

(b) Federal agencies may lease such space only if the Administrator of General Services first determines that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives in accordance with 40 U.S.C. 606(e).

§ 102-73.65 When may Federal agencies consider acquiring leases with purchase options?

Agencies may consider leasing with a purchase option at or below fair market value when one or more of the following conditions exist:

(a) The purchase option offers economic and other advantages to the Government and is consistent with the Government's goals;

(b) The Government is the sole or major tenant of the building, and has a long-term need for the property; or

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

§ 102-73.70 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

All Federal agencies must follow the budget scorekeeping rules for leases, capital leases, and lease-purchases identified in appendices A and B of OMB Circular A-11 (For availability, see 5 CFR 1310.3).

§ 102-73.75 When may Federal agencies consider purchase of buildings?

Agencies may consider purchase of buildings on a case-by-case basis when one or more of the following conditions exist:

(a) It is economically more beneficial to own and manage the property;

(b) There is a long-term need for the property;

(c) The property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time; or

(d) When otherwise in the best interests of the Government.

§ 102-73.80 What factors must Executive agencies consider when purchasing sites?

Agencies must locate proposed Federal buildings on sites that are most advantageous to the United States. Executive agencies must consider factors such as whether the site will contribute to economy and efficiency in the construction, maintenance and operation of the individual building, and how the proposed site relates to the

§ 102-73.85

Government's total space needs in the community. Prior to acquiring, constructing or leasing buildings (or sites for such buildings), Federal agencies must use, to the maximum extent feasible, historic properties available to the agency. In site selections, Executive agencies must consider Executive Orders 12072 (3 CFR, 1978 Comp., p. 213) and 13006 (40 U.S.C. 601a note). In addition, Executive agencies must consider all of the following:

(a) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 101-47, subpart 101-47.8, of this title.

(b) A site adjacent to or in the proximity of an existing Federal building which is well located and is to be retained for long-term occupancy.

(c) The environmental condition of proposed sites prior to purchase: The sites must be free from contamination, unless it is otherwise determined to be in the best interests of the Government to purchase a contaminated site (*e.g.*, reuse of a site under an established "Brownsfields" program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable policies concerning the location of Federal facilities (*e.g.*, to give first priority to locating facilities in rural areas under the Rural Development Act (7 U.S.C. 2204b-1)).

§ 102-73.85 What land acquisition policy must Federal agencies follow?

Federal agencies must follow a land acquisition policy that:

(a) Encourages and expedites the acquisition of real property by agreements with owners;

(b) Avoids litigation, including condemnation actions, where possible and relieves congestion in the courts;

(c) Provides for consistent treatment of owners; and

(d) Promotes public confidence in Federal land acquisition practices.

§ 102-73.90 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate reloca-

41 CFR Ch. 102 (7-1-02 Edition)

tion assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4651-4655) to eligible owners and tenants of property purchased for use by Federal agencies. Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual reasonable moving expenses (in moving himself, his family, business, etc.); actual direct losses of tangible personal property as a result of moving or discontinuing a business; actual reasonable expenses in searching for a replacement business or farm; and actual reasonable expenses necessary to reestablish a displaced farm, non-profit organization, or small business at its new site, but not to exceed \$10,000. The implementing regulations are found in 49 CFR part 24 (see § 105-51.000 of this title).

§ 102-73.95 Is a prospectus required for all acquisition, construction or alteration projects?

(a) No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. The Public Buildings Act of 1959, as amended, 40 U.S.C. 601-619, establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. (Because of the important role the prospectus approval process plays in the budget preparation and planning process and with Congressional oversight responsibilities, Federal agencies must continue to prepare and submit prospectuses for all projects that exceed the prospectus threshold identified in § 102-73.55. All GSA delegations of leasing, alteration, and construction authority are subject to this policy.)

(b) Public Law 104-66, 109 Stat. 734, eliminated the prospectus submission requirement of the Public Buildings Act of 1959 (40 U.S.C. 606(a) and 610(b)).

Federal Management Regulation

§ 102-74.25

§ 102-73.100 What happens if the project exceeds the prospectus threshold?

Such projects require approval by the Senate and the House of Representatives if the dollar value exceeds the prospectus threshold. In order to obtain this approval, prospectuses for such projects must be submitted to GSA and the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives.

PART 102-74—FACILITY MANAGEMENT

Sec.

102-74.5 What is the scope of this part?

102-74.10 What is the basic facility management policy?

102-74.15 What are occupancy services?

102-74.20 What responsibilities do Executive agencies have regarding occupancy services?

102-74.25 What standard in providing occupancy services must Executive agencies follow?

102-74.30 What building services must Executive agencies provide?

102-74.35 What are concessions services?

102-74.40 When must Federal agencies provide concessions services?

102-74.45 Are Federal agencies required to give blind vendors priority in operating vending facilities?

102-74.50 What are conservation programs?

102-74.55 What are asset services?

102-74.60 What asset services must Executive agencies provide?

102-74.65 What standard in providing asset services must Executive agencies follow?

102-74.70 What Federal facility ridesharing policy must Executive agencies follow?

102-74.75 What steps must Executive agencies take to promote ridesharing at Federal facilities?

102-74.80 What specific ridesharing information must Executive agencies report to the Administrator of General Services?

102-74.85 Where should Executive agencies send their Federal Facility Ridesharing Reports?

102-74.90 Are there any exceptions to these ridesharing reporting requirements?

AUTHORITY: 40 U.S.C. 486(c); E.O. 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-74.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-74.10 What is the basic facility management policy?

Executive agencies must manage, operate, and maintain Government-owned and leased buildings in a manner that provides for quality space and services consistent with their operational needs and that accomplish overall Government objectives. The management, operation, and maintenance of buildings and building systems must:

(a) Be cost effective and energy efficient;

(b) Be adequate to meet the agencies' missions;

(c) Meet nationally recognized standards; and

(d) Be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

§ 102-74.15 What are occupancy services?

Occupancy services are:

(a) Building services (see § 102-74.30);

(b) Concession services; and

(c) Conservation programs.

§ 102-74.20 What responsibilities do Executive agencies have regarding occupancy services?

Executive agencies, upon approval from GSA, must manage, administer, and enforce the requirements of agreements (such as Memoranda of Understanding, etc.) and contracts that provide for the delivery of occupancy services.

§ 102-74.25 What standard in providing occupancy services must Executive agencies follow?

Executive agencies must provide occupancy services that substantially conform to nationally recognized standards. As needed, Executive agencies may adopt other standards for buildings and services in Federally-

§ 102-74.30

controlled facilities in order to conform to statutory requirements and to implement cost-reduction efforts.

§ 102-74.30 What building services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide:

(a) Building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions; and

(b) Arrangements for raising and lowering the United States flags at appropriate times. In addition, agencies must display P.O.W. and M.I.A. flags at locations specified in 36 U.S.C. 189a on P.O.W./M.I.A. flag display days.

§ 102-74.35 What are concessions services?

Concessions services are services such as dry cleaners, gift shops, vending facilities (onsite preparation facilities, prepackaged facilities, sundry facilities, and vending machines), cafeterias, employee health units, and public pay telephones.

§ 102-74.40 When must Federal agencies provide concessions services?

Federal agencies, upon approval from GSA, must provide concessions services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. See the Randolph-Sheppard Act, as amended, 20 U.S.C. 107 *et seq.*, and part 101-20, subpart 101-20.2, of this title.

§ 102-74.45 Are Federal agencies required to give blind vendors priority in operating vending facilities?

With certain exceptions, the Randolph-Sheppard Act requires that blind persons licensed under the provisions of the Act be authorized to operate vending facilities on any Federal property, including leased buildings. The Act imposes a positive obligation on

41 CFR Ch. 102 (7-1-02 Edition)

Federal agencies to have suitable sites for vending facilities in buildings that they acquire.

§ 102-74.50 What are conservation programs?

Conservation programs are programs that improve energy and water efficiency and promote the use of solar and other renewable energy. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

§ 102-74.55 What are asset services?

Asset services include repairs (as opposed to those minor repairs identified in § 102-74.30(a)), alterations, and modernizations for real property assets. Typically, these are the type of repairs and alterations necessary to preserve or enhance the value of the real property asset.

§ 102-74.60 What asset services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide asset services such as repairs (in addition to those minor repairs identified in § 102-74.30(a)), alterations, and modernizations for real property assets. Federal agencies must follow the prospectus submission and approval policy identified in §§ 102-73.95 and 102-73.100.

§ 102-74.65 What standard in providing asset services must Executive agencies follow?

Executive agencies must provide asset services that maintain continuity of Government operations, continue efficient building operations, extend the useful life of buildings and related building systems, and provide a quality workplace environment that enhances employee productivity.

Federal Management Regulation

Pt. 102-75

§ 102-74.70 What Federal facility ridesharing policy must Executive agencies follow?

Executive agencies must actively promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities to conserve energy, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work.

§ 102-74.75 What steps must Executive agencies take to promote ridesharing at Federal facilities?

Agencies must:

- (a) Establish an annual ridesharing goal for each facility.
- (b) Report to the Administrator of General Services by June 1 of each year the goals established, the means developed to achieve those goals, and the progress achieved.
- (c) Cooperate with State and local ridesharing agencies where such agencies exist.

§ 102-74.80 What specific ridesharing information must Executive agencies report to the Administrator of General Services?

The head of each agency must submit to GSA by June 1 of each year a report which includes all of the following:

- (a) The name, address, title, and telephone number of the agencywide Employee Transportation Coordinator (ETC).
- (b) A narrative on actions taken and barriers encountered in promoting ridesharing within the agency.
- (c) Information on any noticeable facility achievements.
- (d) A copy of instructions issued to the agency's facility ETC's for implementing the Federal Facility Ridesharing Program.

§ 102-74.85 Where should Executive agencies send their Federal Facility Ridesharing Reports?

Agencies must send their Federal Facility Ridesharing Reports to the Real Property Policy Division (MPR), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102-74.90 Are there any exceptions to these ridesharing reporting requirements?

Yes, facilities with less than 100 full-time employees or less than 100 full-time employees on the largest shift are not required to submit an annual report. Agencies must not subdivide buildings, groups of buildings, or work-sites for the purpose of meeting the exception standards.

PART 102-75—REAL PROPERTY DISPOSAL

Sec.

- 102-75.5 What is the scope of this part?
- 102-75.10 What basic real property disposal policy governs Executive agencies?
- 102-75.15 What real property disposal services must Executive agencies provide?
- 102-75.20 What are Executive agencies' responsibilities concerning the utilization of excess property?
- 102-75.25 What are Executive agencies' responsibilities concerning real property surveys?
- 102-75.30 When may landholding Federal agencies grant rights for non-Federal interim use of excess property reported to GSA?
- 102-75.35 What are Executive agencies' responsibilities concerning the disposal of surplus property?
- 102-75.40 When may Executive agencies dispose of surplus real property by exchange for privately owned property?
- 102-75.45 When may Executive agencies outlease surplus real property for non-Federal interim use?
- 102-75.50 What are Federal agencies' reporting responsibilities under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411)?
- 102-75.55 What are Executive agencies' responsibilities concerning public benefit conveyances?
- 102-75.60 When may Executive agencies conduct negotiated sales?
- 102-75.65 What are Executive agencies' responsibilities concerning negotiated sales?
- 102-75.70 What can Executive agencies do to eliminate the potential for windfall profits to public agencies in negotiated sales?
- 102-75.75 What is a negotiated sale for economic development purposes?
- 102-75.80 What are Executive agencies' responsibilities concerning public sales?
- 102-75.85 How can Federal agencies obtain related disposal services?
- 102-75.90 What type of appraisal value must be obtained for real property disposal transactions?

§ 102-75.5

102-75.95 Are appraisals required for all real property disposal transactions?

102-75.100 Who must appraise the real property?

AUTHORITY: 40 U.S.C. 486(c), 483(a), and 484; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-75.10 What basic real property disposal policy governs Executive agencies?

Executive agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must make surveys of real property under their jurisdiction to identify property that is unutilized, underutilized, or not being put to optimum use. Executive agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

§ 102-75.15 What real property disposal services must Executive agencies provide?

Executive agencies must provide real property disposal services for real property assets under their custody and control. These real property disposal services include utilization of excess property, surveys, disposal of surplus property, public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

§ 102-75.20 What are Executive agencies' responsibilities concerning the utilization of excess property?

Executive agencies' responsibilities concerning the utilization of excess property are to:

- (a) Increase the identification and reporting of their excess real property;
- (b) Achieve maximum use of their excess real property, in terms of economy

41 CFR Ch. 102 (7-1-02 Edition)

and efficiency, to minimize expenditures for the purchase of real property;

(c) 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; and

(d) Obtain assistance from GSA in resolving conflicting requests for transferring real property that the involved agencies cannot resolve.

§ 102-75.25 What are Executive agencies' responsibilities concerning real property surveys?

A landholding agency's responsibilities concerning real property surveys are to:

(a) Survey real property under its control (*i.e.*, that property reported on its financial statements) at least annually to identify property that is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency's needs and the property's location. In conducting annual reviews of their property holdings, § 101-47.801(b) of this title and other applicable GSA regulations provide guidelines for Executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

§ 102-75.30 When may landholding Federal agencies grant rights for non-Federal interim use of excess property reported to GSA?

Landholding Federal agencies may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency.

Federal Management Regulation

§ 102-75.60

§ 102-75.35 What are Executive agencies' responsibilities concerning the disposal of surplus property?

Executive agencies must obtain from GSA a determination that their excess real property is not needed for Federal use and is surplus to the needs of the Federal Government. After receiving this determination, Executive agencies, upon approval from GSA, must expeditiously make the surplus property available for acquisition by State and local governmental units and nonprofit institutions (see § 102-75.55) or for sale by public advertising, negotiation, or other disposal action. Executive agencies must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. See § 101-47.202-2(b) of this title for the requirements for reporting excess real property. Where hazardous substance activity is identified, see § 101-47.304-14 of this title for required information that the disposal agency must incorporate into Invitation for Bids/Offers to Purchase.

§ 102-75.40 When may Executive agencies dispose of surplus real property by exchange for privately owned property?

Executive agencies may dispose of surplus real property by exchange for privately owned property only:

(a) For property management considerations such as boundary realignment or provision of access; or

(b) Where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

§ 102-75.45 When may Executive agencies outlease surplus real property for non-Federal interim use?

Executive agencies may outlease surplus real property for non-Federal interim use, pending its disposition, when both of the following conditions exist:

(a) The lease or permit does not exceed one year and is revocable with not

more than a 30-day notice by the disposal agency; and

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property.

§ 102-75.50 What are Federal agencies' reporting responsibilities under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411)?

By December 31 of each year, each landholding agency responsible for reporting must notify the Department of Housing and Urban Development (HUD) regarding the current availability status and classification of each property controlled by the agency that:

(a) Was included in a list of suitable properties published that year by HUD; and

(b) Remains available for application for use to assist the homeless, or has become available for application during that year.

§ 102-75.55 What are Executive agencies' responsibilities concerning public benefit conveyances?

Based on a highest and best use analysis, Executive agencies, upon approval from GSA, may make surplus real property available to State and local governments and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations are found at § 101-47.308 of this title.

§ 102-75.60 When may Executive agencies conduct negotiated sales?

Executive agencies may conduct negotiated sales only when:

(a) The estimated fair market value of the property does not exceed \$15,000; or

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition; or

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market

§ 102-75.65

value of the property and other satisfactory terms of disposal are obtainable by negotiation; or

(d) 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 obtainable by negotiations. Such negotiated sales to public bodies must be limited to where a public benefit will result from a negotiated sale which would not be realized from a competitive sale disposal (some examples of such purposes are administrative offices and economic development); or

(e) Negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as disposals of power transmission lines for public or cooperative power projects.

§ 102-75.65 What are Executive agencies' responsibilities concerning negotiated sales?

Executive agencies must:

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 484(e)(6)(A), to the appropriate committees of the Congress in advance of such disposal.

§ 102-75.70 What can Executive agencies do to eliminate the potential for windfall profits to public agencies in negotiated sales?

To eliminate the potential for windfall profits to public agencies, Executive agencies must include in negotiated sales to public agencies an excess profits clause, which usually runs for 3 years. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchaser's costs will be remitted to the Federal Government. (Put the clause found in § 101-47.4908 of this title in the offer to pur-

41 CFR Ch. 102 (7-1-02 Edition)

chase and in the conveyance document.)

§ 102-75.75 What is a negotiated sale for economic development purposes?

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

§ 102-75.80 What are Executive agencies' responsibilities concerning public sales?

Executive agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

§ 102-75.85 How can Federal agencies obtain related disposal services?

Federal agencies with independent disposal authority are encouraged to obtain disposal related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that agencies may remain focused on their core mission.

§ 102-75.90 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, Executive agencies must 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.

§ 102-75.95 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal

Federal Management Regulation

§ 102-76.15

transactions. However, appraisals are not required when either of the following conditions exist:

(a) An appraisal will serve no useful purpose (*e.g.*, legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in §101-47.308 of this title.

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed \$50,000.

§ 102-75.100 Who must appraise the real property?

Executive agencies must use only experienced and qualified real estate appraisers familiar with types of property to be appraised when conducting the appraisal. When an appraisal is required for the purposes of disposing of surplus property by negotiation under §102-75.60(c), (d), or (e), contract appraisers that meet this same standard must be used. However, Executive agencies may authorize any other method of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining such data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

PART 102-76—DESIGN AND CONSTRUCTION

Sec.

102-76.5 What is the scope of this part?

102-76.10 What basic design and construction policy governs Federal agencies?

102-76.15 What are design and construction services?

102-76.20 What issues must Federal agencies consider in providing site planning and landscape design services?

102-76.25 What standards must Federal agencies meet in providing architectural and interior design services?

102-76.30 Seismic safety. [Reserved]

102-76.35 Flood plains. [Reserved]

AUTHORITY: 40 U.S.C. 486(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 601-619 and elsewhere as included under 40 U.S.C. 490(a) and (c)); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-76.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-76.10 What basic design and construction policy governs Federal agencies?

Federal agencies, upon approval from GSA, are bound by the following basic design and construction policies:

(a) Provide the highest quality services for designing and constructing new Federal facilities and for repairing and altering existing Federal facilities. These services must be timely, efficient, and cost effective.

(b) Use a distinguished architectural style and form in Federal facilities that reflects the dignity, enterprise, vigor and stability of the Federal Government.

(c) Follow nationally recognized model building codes and other applicable nationally recognized codes that govern Federal construction to the maximum extent feasible and consider local building code requirements. (See 40 U.S.C. 618 and 619.)

(d) Design Federal buildings to have a long life expectancy and accommodate periodic changes due to renovations.

(e) Make buildings cost effective, energy efficient, and accessible to and usable by the physically impaired.

(f) Provide for building service equipment that is accessible for maintenance, repair, or replacement without significantly disturbing occupied space.

(g) Consider ease of operation when selecting mechanical and electrical equipment.

(h) Agencies must follow the prospectus submission and approval policy identified in §§102-73.95 and 102-73.100 of this chapter.

§ 102-76.15 What are design and construction services?

Design and construction services are:

§ 102-76.20

- (a) Site planning and landscape design;
- (b) Architectural and interior design; and
- (c) Engineering systems design.

§ 102-76.20 What issues must Federal agencies consider in providing site planning and landscape design services?

In providing site planning and design services, Federal agencies must:

- (a) Make the site planning and landscape design a direct extension of the building design;
- (b) Make a positive contribution to the surrounding landscape;
- (c) Consider requirements (other than procedural requirements) of local zoning laws and laws relating to setbacks, height, historic preservation and aesthetic qualities of a building;
- (d) Identify areas for future building expansion in the architectural and site design concept for all buildings where an expansion need is identified to exist;
- (e) Create a landscape design that is a pleasant, dynamic experience for occupants and visitors to Federal facilities and, where appropriate, encourage public access to and stimulate pedestrian traffic around the facilities. Coordinate the landscape design with the architectural characteristics of the building; and
- (f) Comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq., and the National Historic Preservation Act, as amended, 16 U.S.C. 470 et seq., for each project.
- (g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies.

§ 102-76.25 What standards must Federal agencies meet in providing architectural and interior design services?

Federal agencies must design distinctive and high quality Federal facilities that meet all of the following standards:

- (a) Reflect the local architecture in buildings through the use of building form, materials, colors, or detail. Express a quality of permanence in the building interior similar to the building exterior.

41 CFR Ch. 102 (7-1-02 Edition)

(b) For new construction and major renovations, provide full access to and use of Federally-controlled facilities for physically impaired persons. Follow the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157 (Uniform Federal Accessibility Standards (UFAS)) or Americans with Disabilities Act of 1990, Public Law 101-336, 104 Stat. 327 (ADA accessibility guidelines), whichever is more stringent. For minor renovations in existing buildings, meet minimum UFAS requirements. A more detailed explanation of these standards can be found in part 101-19, subpart 101-19.6, of this title.

(c) Use metric specifications in construction where the metric system is the accepted industry standard, and to the extent that such usage is economically feasible and practical.

(d) Provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of Government operations during civil disturbances, natural disasters and other emergency situations.

(e) Design and construct facilities that meet or exceed the energy performance standards applicable to Federal buildings in 10 CFR part 435.

§ 102-76.30 Seismic safety. [Reserved]

§ 102-76.35 Flood plains. [Reserved]

PART 102-77—ART-IN-ARCHITECTURE

Sec.

102-77.5 What is the scope of this part?

102-77.10 What basic Art-in-architecture policy governs Federal agencies?

102-77.15 Who funds the Art-in-architecture efforts?

102-77.20 Who should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?

102-77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-architecture?

AUTHORITY: 40 U.S.C. 486(c) and 601a.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

Federal Management Regulation

§ 102-78.5

§ 102-77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-77.10 What basic Art-in-architecture policy governs Federal agencies?

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings, and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture, and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

§ 102-77.15 Who funds the Art-in-architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art-in-architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings, or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisition, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

§ 102-77.20 Who should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual, and historic interests and values of a community. In addition, Federal agencies should work collaboratively with the architect of the building, art professionals, when commissioning and selecting art for Federal buildings. Federal agencies should

commission artwork that is diverse in style and media.

§ 102-77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-architecture?

Yes, Federal agencies should provide Art-in-architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

PART 102-78—HISTORIC PRESERVATION

Sec.

- 102-78.5 What is the scope of this part?
- 102-78.10 What basic historic preservation policy governs Federal agencies?
- 102-78.15 What are historic properties?
- 102-78.20 Are Federal agencies required to identify historic properties?
- 102-78.25 What is an undertaking?
- 102-78.30 What are consulting parties?
- 102-78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?
- 102-78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?
- 102-78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?
- 102-78.50 What historic preservation services must Federal agencies provide?
- 102-78.55 For which properties must Federal agencies assume historic preservation responsibilities?
- 102-78.60 What are Federal agencies' historic preservation responsibilities when acquiring leased space?
- 102-78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?
- 102-78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

AUTHORITY: 16 U.S.C. 470 h-2; 40 U.S.C. 486(c) and 490(a).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings

§ 102-78.10

Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National Historic Preservation Act (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

§ 102-78.10 What basic historic preservation policy governs Federal agencies?

To protect, enhance and preserve historic and cultural property under their control, Federal agencies must consider the effects of their undertakings on historic and cultural properties and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

§ 102-78.15 What are historic properties?

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

§ 102-78.20 Are Federal agencies required to identify historic properties?

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

§ 102-78.25 What is an undertaking?

The term undertaking means a project, activity, or program under the direct or indirect jurisdiction of a Federal agency, including those:

(a) Carried out by or on behalf of the agency;

41 CFR Ch. 102 (7-1-02 Edition)

(b) Carried out with Federal financial assistance;

(c) Requiring a Federal permit, license, or approval; and

(d) Subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

§ 102-78.30 What are consulting parties?

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (*i.e.*, Section 106 of the National Historic Preservation Act) that requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; Representatives of local governments; Applicants for Federal assistance, permits, licenses and other approvals; and other individuals and organizations with a demonstrated interest in the undertaking.

§ 102-78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

§ 102-78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that is feasible and prudent.

Federal Management Regulation

Pt. 102-79

Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

§ 102-78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

§ 102-78.50 What historic preservation services must Federal agencies provide?

Federal agencies must provide the following historic preservation services:

(a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property; and

(b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.

§ 102-78.55 For which properties must Federal agencies assume historic preservation responsibilities?

Federal agencies must assume historic preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control of other Federal agencies must obtain approval from the agency having custody and control of the building.

§ 102-78.60 What are Federal agencies' historic preservation responsibilities when acquiring leased space?

In leasing historic property, Federal agencies must give a preference to such leasing actions in accordance with hierarchy of consideration identified in § 102-79.90 of this chapter.

§ 102-78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?

Federal agencies must:

(a) To the extent practicable, establish and implement alternatives for

historic properties, including adaptive reuse, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of Interior's approval of the plans of transferees of surplus Federally-owned historic properties.

(b) Review all proposed excess actions to identify any properties listed on or eligible for listing on the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

§ 102-78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National Historic Preservation Act responsibilities.

PART 102-79—ASSIGNMENT AND UTILIZATION OF SPACE

Sec.

102-79.5 What is the scope of this part?

102-79.10 What basic assignment and utilization of space policy governs an Executive agency?

102-79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

102-79.20 What standard must Executive agencies promote when assigning space?

102-79.25 Can Federal agencies allot space in Federal buildings for the provision of child care services?

102-79.30 Can Federal agencies allot space in Federal buildings for establishing fitness centers?

102-79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

102-79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?

102-79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

§ 102-79.5

102-79.50 What standard must Executive agencies promote in their utilization of space?

102-79.55 Are agencies required to use historic properties available to the agency?

102-79.60 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

102-79.65 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?

102-79.70 What is a central business area?

102-79.75 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

102-79.80 Who must approve the final delineated area?

102-79.85 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?

102-79.90 Are Executive agencies required to give preference to historic properties when acquiring leased space?

102-79.95 Automated external defibrillators. [Reserved]

AUTHORITY: 40 U.S.C. 486(c); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; and E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-79.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-79.10 What basic assignment and utilization of space policy governs an Executive agency?

Executive agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, meets the needs of the occupant agencies, and provides child care and physical fitness facilities in the workplace when adequately justified. An Executive agency must promote maximum utilization of Federal workspace, consistent with mission requirements, to maximize its value to the Government.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

Executive agencies must provide assignment and utilization services that will maximize the value of Federal real property resources and improve the productivity of the workers housed therein.

§ 102-79.20 What standard must Executive agencies promote when assigning space?

Executive agencies must promote the optimum use of space for each assignment at the minimum cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

§ 102-79.25 Can Federal agencies allot space in Federal buildings for the provision of child care services?

Yes, in accordance with 40 U.S.C. 490b, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if:

(a) Such space is available;

(b) Such agency determines that such space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian who is a Federal Government employee; and

(c) Such agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

§ 102-79.30 Can Federal agencies allot space in Federal buildings for establishing fitness centers?

Yes, in accordance with 5 U.S.C. 7901, Federal agencies can allot space in Federal buildings for establishing fitness programs.

§ 102-79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

Federal agencies must address the following elements in their planning effort for establishing fitness programs:

(a) A survey indicating employee interest in the program;

Federal Management Regulation

§ 102-79.60

(b) A three to five year implementation plan demonstrating long-term commitment to physical fitness/health for employees;

(c) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities;

(d) Identification of a person skilled in prescribing exercise to direct the fitness program;

(e) An approach which will consider key health behavior related to degenerative disease, including smoking and nutrition;

(f) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility;

(g) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

§ 102-79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?

Yes, in accordance with 12 U.S.C. 1770, Federal agencies may allot space in Federal buildings to Federal credit unions without charge for rent or services if:

(a) At least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families; and

(b) If space is available.

§ 102-79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

Federal agencies may provide without charge to Federal credit union services such as:

(a) Lighting;

(b) Heating and cooling;

(c) Electricity;

(d) Office furniture;

(e) Office machines and equipment;

(f) Telephone service (including installation of lines and equipment and

other expenses associated with telephone service); and

(g) Security systems (including installation and other expenses associated with security systems).

§ 102-79.50 What standard must Executive agencies promote in their utilization of space?

Executive agencies, acquiring or utilizing Federally owned and leased space under the Federal Property and Administrative Services Act of 1949, as amended, must promote efficient utilization of space according to GSA standards. In order to maximize the use of vacant space, use existing GSA-controlled space to the maximum extent practical. After considering the availability of GSA-controlled space, extend priority consideration to available space in buildings under the custody and control of the U.S. Postal Service before acquiring additional space. Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through out-granting (for example, outlease, permit, license) to non-Federal entities to the extent authorized by law.

§ 102-79.55 Are agencies required to use historic properties available to the agency?

Yes, Federal agencies must assume responsibility for the preservation of the historic properties they own or control. Prior to acquiring, constructing or leasing buildings, agencies must use, to the maximum extent feasible, historic properties already owned or leased by the agency (16 U.S.C. 470h-2).

§ 102-79.60 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

Yes, Executive agencies must give first priority to the location of new offices and other facilities in rural areas (7 U.S.C. 2204b-1), unless their mission or program requirements call for locations in an urban area.

§ 102-79.65

§ 102-79.65 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?

Yes, when agency mission and program requirements call for location in an urban area and new space must be acquired, constructed or leased, Executive agencies must give first consideration to central business areas (CBAs) and other areas designated by local officials (Executive Order 12072 (43 FR 36869, 3 CFR, 1978 Comp., p. 213.) and Executive Order 13006 (61 FR 26071, 3 CFR, 1996 Comp., p. 195)).

§ 102-79.70 What is a central business area?

Central business area means the centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials in accordance with Executive Order 12072.

§ 102-79.75 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive orders.

§ 102-79.80 Who must approve the final delineated area?

Federal agencies conducting the procurement must approve the final delineated area for site acquisitions and lease actions and must confirm that the final delineated area complies with the requirements of all applicable laws, regulations, and Executive orders.

§ 102-79.85 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?

In accordance with the Competition in Contracting Act of 1984 (CICA), as amended, (41 U.S.C. 253(a)) Executive agencies must consider whether restricting the delineated area for obtaining leased space to the central

41 CFR Ch. 102 (7-1-02 Edition)

business area will provide for adequate competition when acquiring leased space. Where an Executive agency determines that the delineated area must be expanded beyond the CBA in order to provide adequate competition, the agency may expand the delineated area in consultation with local officials. Executive agencies must continue to include the CBA in such expanded areas.

§ 102-79.90 Are Executive agencies required to give preference to historic properties when acquiring leased space?

Yes, section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h-2), requires that agencies first consider historic properties already under agency control. However, the Act also provides that prior to acquiring, constructing or leasing new space, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended (7 U.S.C. 2204b-1), Executive Order 13006 and Executive Order 12072, Executive agencies must first consider historic properties within historic districts when locating Federal facilities. If no such suitable historic property is available, Executive agencies must then consider other developed or undeveloped sites within historic districts. Finally, Executive agencies must consider suitable historic properties outside of historic districts, if no suitable site exists within a historic district.

§ 102-79.95 Automated external defibrillators. [Reserved]

PART 102-80—SAFETY AND ENVIRONMENTAL MANAGEMENT

Sec.

102-80.5 What is the scope of this part?

102-80.10 What are the basic safety and environmental management policies for real property?

102-80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

102-80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

102-80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Federal Management Regulation

§ 102–80.20

- 102–80.30 What are Federal agencies' responsibilities concerning lead?
- 102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?
- 102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?
- 102–80.45 What are Federal agencies' responsibilities concerning fire prevention and fire protection engineering?
- 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate reduction strategies?
- 102–80.55 Are Federal agencies responsible for performing facility assessments?
- 102–80.60 Are Federal agencies responsible for managing the execution of risk reduction projects?
- 102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?
- 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?
- 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

AUTHORITY: 40 U.S.C. 486(c) and 490.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–80.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The responsibilities for safety and environmental management under this part are intended to apply to GSA or those Federal agencies operating in GSA space pursuant to a GSA delegation of authority.

§ 102–80.10 What are the basic safety and environmental management policies for real property?

The basic safety and environmental management policies for real property are that Federal agencies must:

- (a) Provide for a safe and healthful work environment for Federal employees and the visiting public;
- (b) Protect Federal real and personal property;
- (c) Promote mission continuity;

- (d) Provide reasonable safeguards for emergency forces if an incident occurs;
- (e) Assess risk;
- (f) Make decisionmakers aware of risks; and
- (g) Act promptly and appropriately in response to risk.

§ 102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

Federal agencies have the following responsibilities concerning the assessment and management of asbestos:

- (a) Inspect and assess buildings for the presence and condition of asbestos-containing materials. Space to be leased must be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency (EPA) guidance must be implemented;
- (b) Manage in-place asbestos that is in good condition and not likely to be disturbed;
- (c) Abate damaged asbestos, and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos;
- (d) Not use asbestos in new construction, renovation/modernization or repair of their owned or leased space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section; and
- (e) Communicate all written and oral asbestos information about the leased space to tenants.

§ 102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

Federal agencies have the following responsibilities concerning the abatement of radon in space when radon levels exceed current EPA standards:

- (a) Retest abated areas and make lessors retest, as required, abated areas to adhere to EPA standards; and
- (b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to

§ 102-80.25

EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must retest, as required, to adhere to EPA standards.

§ 102-80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Federal agencies must assess indoor air quality of buildings as part of their safety and environmental facility assessments. Federal agencies must respond to tenant complaints on air quality and take appropriate corrective action where air quality does not meet applicable standards.

§ 102-80.30 What are Federal agencies' responsibilities concerning lead?

Federal agencies have the following responsibilities concerning lead in buildings:

- (a) Test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces.
- (b) Not remove lead based paint from surfaces in good condition.
- (c) Test all painted surfaces for lead in proposed or existing child care centers.
- (d) Abate lead-based paint found in accordance with Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines, available by writing to HUD USER, P.O. Box 6091, Rockville, MD, 20850.
- (e) Test potable water for lead in all drinking water outlets in child care centers.
- (f) Take corrective action when lead levels exceed the HUD Guidelines.

§ 102-80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes are to:

- (a) Monitor the transport, use, and disposition of hazardous materials and waste in buildings to provide for compliance with GSA, Occupational Safety and Health Administration (OSHA), Department of Transportation, EPA, and applicable State and local requirements. In addition to those operating in GSA space pursuant to a delegation

41 CFR Ch. 102 (7-1-02 Edition)

of authority, tenants in GSA space must comply with these requirements.

- (b) In leased space, include in all agreements with the lessor requirements that hazardous materials kept in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

§ 102-80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Federal agencies have the following responsibilities concerning the management of underground storage tanks in real property:

- (a) Register, manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and applicable State and local requirements.
- (b) Require the party responsible for tanks they use but don't own to follow these requirements and to be responsible for the cost of compliance.

§ 102-80.45 What are Federal agencies' responsibilities concerning fire prevention and fire protection engineering?

Federal agencies must follow accepted fire prevention practices in operating and managing buildings. Federally-owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 619, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local requirements and inspection. Federal agencies must use the National Fire Protection Association (NFPA) codes and standards (obtained by writing to NFPA, 11 Tracy Drive, Avon, MA 02322.) as a guide for their building operations.

§ 102-80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental

Federal Management Regulation

management risks and appropriate reduction strategies for buildings. Federal agencies occupying as well as operating buildings must identify any safety and environmental management risks and report or correct the situation, as appropriate.

§ 102-80.55 Are Federal agencies responsible for performing facility assessments?

Yes, Federal agencies must evaluate facilities to comply with GSA's safety and environmental program and applicable Federal, State and local environmental laws and regulations. Federal agencies should conduct these evaluations in accordance with schedules that are compatible with repair and alteration and leasing operations.

§ 102-80.60 Are Federal agencies responsible for managing the execution of risk reduction projects?

Yes, Federal agencies must manage the execution of risk reduction projects in buildings they operate. Federal agencies must identify and take appropriate action to eliminate hazards and regulatory noncompliance.

§ 102-80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Federal agencies have the following responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents in buildings they operate:

- (a) Investigate all incidents regardless of severity.
- (b) Form Boards of Investigation for incidents resulting in serious injury, death, or significant property losses.

§ 102-80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Yes, Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

§ 102-81.15

§ 102-80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Federal agencies must assess required environmental issues throughout planning and project development, so that the environmental impacts of a project are considered during the decisionmaking process.

PART 102-81—SECURITY

Sec.

102-81.5 What is the scope of this part?

102-81.10 What basic security policy governs Federal agencies?

102-81.15 Who is responsible for upgrading and maintaining security standards in each Federally-owned facility?

AUTHORITY: 40 U.S.C. 318a, 486(c) and 490.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-81.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-81.10 What basic security policy governs Federal agencies?

Federal agencies on Federal property under the charge and control of the Administrator and having a security delegation of authority from the Administrator must provide for the security and protection of the real estate they occupy, including the protection of persons within the property.

§ 102-81.15 Who is responsible for upgrading and maintaining security standards in each Federally-owned facility?

In a June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled, "Upgrading Security at Federal Facilities" (see the Weekly Compilation of Presidential Documents, vol. 31, p. 1148), the President directed that Executive agencies must, where feasible, upgrade and maintain security in facilities they own or lease under their own authority to the minimum standards specified in

the Department of Justice's June 28, 1995 study entitled "Vulnerability Assessment of Federal Facilities." The study may be obtained by writing to the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA, 15250-7954.

PART 102-82—UTILITY SERVICES

Sec.

102-82.5 What is the scope of this part?

102-82.10 What basic utility services policy govern Executive agencies?

102-82.15 What utility services must Executive agencies provide?

102-82.20 What are Executive agencies' rate intervention responsibilities?

102-82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

AUTHORITY: 40 U.S.C. 481(a) and 486(c).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102-82.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102-82.10 What basic utility services policy govern Executive agencies?

Executive agencies procuring, managing or supplying utility services under the Federal Property and Administrative Services Act of 1949 must provide or procure services that promote economy and efficiency with due regard to the mission responsibilities of the agencies concerned.

§ 102-82.15 What utility services must Executive agencies provide?

Executive agencies must negotiate with public utilities to procure utility services and, where appropriate, provide rate intervention services in proceedings (see §§ 102-72.100 and 102-72.105 of this chapter) before Federal and State utility regulatory bodies.

§ 102-82.20 What are Executive agencies' rate intervention responsibilities?

Where the consumer interests of the Federal Government will be significantly

cantly affected and upon receiving a delegation of authority from GSA, Executive agencies must provide representation in proceedings involving utility services before Federal and State regulatory bodies. Specifically, these responsibilities include instituting formal or informal action before Federal and State regulatory bodies to contest the level, structure, or applicability of rates or service terms of utility suppliers. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA when the Secretary determines such actions to be in the best interests of national security.

§ 102-82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense when the Secretary determines it to be in the best interests of national security, must provide for the procurement of utility services (such as commodities and utility rebate programs), as required, and must procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service. Executive agencies, upon receiving a delegation of authority from GSA, may enter into contracts for utility services for periods not exceeding ten years (40 U.S.C. 481).

PART 102-83—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES [RESERVED]

PART 102-84—ANNUAL REAL PROPERTY INVENTORIES

Sec.

102-84.5 What is the scope of this part?

102-84.10 What is the purpose of the Annual Real Property Inventory Program?

102-84.15 Why must I provide information for the Annual Real Property Inventory?

102-84.20 Where should I obtain information to be reported for the Annual Real Property Inventory?

102-84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?

Federal Management Regulation

§ 102-84.25

102-84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?

102-84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?

102-84.40 What types of real property must I report for the Annual Real Property Inventory?

102-84.45 What types of real property must not be reported for the Annual Real Property Inventory?

102-84.50 Can the GSA Form 1166 be used to report information?

102-84.55 When are the Annual Real Property Inventory reports due?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 55594, Nov. 2, 2001, unless otherwise noted.

§ 102-84.5 What is the scope of this part?

GSA's policies contained in this part apply to all Federal agencies. This part prescribes guidance that you must follow in preparing and submitting annual real property inventory information for real property owned by and leased to the United States. The detailed guidance implementing these policies is contained in separate customer guides issued by the GSA Office of Governmentwide Policy.

§ 102-84.10 What is the purpose of the Annual Real Property Inventory Program?

The purpose of the Annual Real Property Inventory program is to:

(a) Maintain a centralized source of information on Federal real property holdings;

(b) Track space utilization of reporting agencies;

(c) Provide support for consolidated Federal financial statements on real property assets; and

(d) Establish a reference for answering inquiries from the Congress, the press, trade associations, educational institutions, Federal, State and local government agencies, and the general public.

§ 102-84.15 Why must I provide information for the Annual Real Property Inventory?

You must provide information for the Annual Real Property Inventory because:

(a) The Senate Committee on Appropriations requests that the Government maintain an Annual Real Property Inventory.

(b) Executive Order 12411, Government Work Space Management Reforms, dated March 29, 1983 (3 CFR, 1983 Comp., p. 155), requires that Executive agencies:

(1) Produce and maintain a total inventory of work space and related furnishings and declare excess to the Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs; and

(2) Establish information systems, implement inventory controls and conduct surveys, in accordance with procedures established by the Administrator of General Services, so that a governmentwide reporting system may be developed.

§ 102-84.20 Where should I obtain information to be reported for the Annual Real Property Inventory?

You should obtain data reported for the Annual Real Property Inventory from the most accurate real property and accounting records maintained by your agency, preferably the same accounting records used to support your agency's financial statements.

§ 102-84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?

Yes, you must designate an official to serve as your agency's point of contact for the Annual Real Property Inventories. We recommend that you designate the same point of contact for the Federally-owned and leased real property inventory, although separate points of contact are permitted. You must advise the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, in writing, of the name(s) of these representative(s) and any subsequent changes. Each agency's point of contact for the real property inventories can be found at <http://worldwide.gsa.gov>.

§ 102-84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?

Yes, your agency's highest ranking real property official must certify the accuracy of the real property information submitted to GSA.

§ 102-84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?

Each agency that carries real property on its financial statement as of September 30 each year has the responsibility for submitting the real property inventory information. Information provided in these reports related to asset values must be consistent with agency records used for financial reporting in accordance with standards issued by the Federal Accounting Standards Advisory Board (FASAB). For purposes of this part, this requirement shall apply regardless of the method used to acquire the property or which agency is currently using or occupying the property.

§ 102-84.40 What types of real property must I report for the Annual Real Property Inventory?

You must report for the Annual Real Property Inventory all land, buildings, and other structures and facilities owned by the United States (including wholly-owned Federal Government corporations) throughout the world and all real property leased by the United States from private individuals, organizations, and municipal, county, State, and foreign governments. These reports must include all real property that a Federal agency carries on its financial statement and/or in documentation accompanying the financial statement, such as:

- (a) Unreserved public domain lands;
- (b) Public domain lands reserved for national forests, national parks, military installations, or other purposes;
- (c) Real property acquired by purchase, construction, donation, eminent domain proceedings, or any other method;
- (d) Real property in which the Government has a long-term interest considered by the reporting agency as being equivalent to ownership. This would include land acquired by treaty

or long-term lease (*e.g.*, 99-year lease), and that your agency considers equivalent to Federally-owned land;

(e) Buildings or other structures and facilities owned by or leased to the Government whether or not located on Government-owned land;

(f) Excess and surplus real property;

(g) Real property held in trust by the Federal Government;

(h) Leased real property (including leased land, leased buildings, leased other structures and facilities, or combination thereof); and

(i) Real property leased rent free or for a nominal rental rate if the real property is considered significant by the reporting agency.

§ 102-84.45 What types of real property must not be reported for the Annual Real Property Inventory?

You must not report real property that is not carried on your agency's financial statements, such as:

(a) Properties acquired through foreclosure, confiscation, or seizure to be liquidated in settlement of a claim or debt to the Federal Government;

(b) Rights-of-way or easements granted to the Federal Government; and

(c) Lands administered by the United States under trusteeship by authority of the United Nations.

§ 102-84.50 Can the GSA Form 1166 be used to report information?

No, GSA Form 1166 may not be used to report information. Agencies must submit information in an electronic format. For more information on format requirements, contact GSA's Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street NW., Washington, DC 20405, by telephone at (202) 501-0856, or e-mail at assetmanagement@gsa.gov.

§ 102-84.55 When are the Annual Real Property Inventory reports due?

You must prepare the Annual Real Property Inventory information prescribed in § 102-84.50 as of the last day of each fiscal year. This information is due to the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405,

Federal Management Regulation

Pt. 102-85

no later than November 15 of each year.

PART 102-85—PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Subpart A—Pricing Policy—General

Sec.

- 102-85.5 By what authority is the pricing policy in this part prescribed?
- 102-85.10 What is the scope of this part?
- 102-85.15 What are the basic policies for charging Rent for space and services?
- 102-85.20 What does an Occupancy Agreement (OA) do?
- 102-85.25 What is the basic principle governing OAs?
- 102-85.30 Are there special rules for certain Federal customers?
- 102-85.35 What definitions apply to this part?
- 102-85.40 What are the major components of the pricing policy?

Subpart B—Occupancy Agreement

- 102-85.45 When is an Occupancy Agreement required?
- 102-85.50 When does availability of funding have to be certified?
- 102-85.55 What are the terms and conditions included in an OA?
- 102-85.60 Who can execute an OA?
- 102-85.65 How does an OA obligate the customer agency?
- 102-85.70 Are the standard OA terms appropriate for non-cancelable space?
- 102-85.75 When can space assignments be terminated?
- 102-85.80 Who is financially responsible for expenses resulting from tenant non-performance?
- 102-85.85 What if a customer agency participates in a consolidation?

Subpart C—Tenant Improvement Allowance

- 102-85.90 What is a tenant improvement allowance?
- 102-85.95 Who pays for the TI allowance?
- 102-85.100 How does a customer agency pay for tenant improvements?
- 102-85.105 How does an agency pay for customer alterations that exceed the TI allowance?
- 102-85.110 Can the allowance amount be changed?

Subpart D—Rent Charges

- 102-85.115 How is the Rent determined?
- 102-85.120 What is “shell Rent”?

- 102-85.125 What alternate methods may be used to establish Rent in Federally owned space?
- 102-85.130 How are exemptions from Rent granted?
- 102-85.135 What if space and services are provided by other executive agencies?
- 102-85.140 How are changes in Rent reflected in OAs?
- 102-85.145 When are customer agencies responsible for Rent charges?
- 102-85.150 How will Rent charges be reflected on the customer agency’s Rent bill?
- 102-85.155 What does a customer agency do if it does not agree with a Rent bill?
- 102-85.160 How does a customer agency know how much to budget for Rent?

Subpart E—Standard Levels of Service

- 102-85.165 What are standard levels of service?
- 102-85.170 Can flexitime and other alternative work schedules cost the customer agency more?
- 102-85.175 Are the standard level services for cleaning, mechanical operation, and maintenance identified in an OA?
- 102-85.180 Can there be other standard services?
- 102-85.185 Can space be exempted from the standard levels of service?
- 102-85.190 Can GSA Rent be adjusted when standard levels of service are performed by other customer agencies?

Subpart F—Special Services

- 102-85.195 Does GSA provide special services?

Subpart G—Continued Occupancy, Relocation and Forced Moves

- 102-85.200 Can customer agencies continue occupancy of space or must they relocate at the end of an OA?
- 102-85.205 What happens if a customer agency continues occupancy after the expiration of an OA?
- 102-85.210 What if a customer agency has to relocate?
- 102-85.215 What if another customer agency forces a GSA customer to move?
- 102-85.220 Can a customer agency forced to relocate waive the reimbursements?
- 102-85.225 What are the funding responsibilities for relocations resulting from emergencies?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 23169, May 8, 2001, unless otherwise noted.

**Subpart A—Pricing Policy—
General**

§ 102-85.5 By what authority is the pricing policy in this part prescribed?

(a) General authority is granted in the Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210(j), 63 Stat. 390 and 86 Stat. 219; (40 U.S.C. 486(c) and 40 U.S.C. 490(j), respectively).

(b) This part implements the applicable provisions of Federal law, including, but not limited to, the:

(1) Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended;

(2) Act of July 1, 1898 (40 U.S.C. 285);

(3) Act of April 28, 1902 (40 U.S.C. 19);

(4) Act of August 27, 1935 (40 U.S.C. 304c);

(5) Public Buildings Act of 1959, as amended (40 U.S.C. 601-619);

(6) Public Buildings Amendments of 1972, Pub. L. 92-313, (86 Stat. 219);

(7) Rural Development Act of 1972, Pub. L. 92-419, (86 Stat. 674);

(8) Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note);

(9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*);

(10) National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*);

(11) Intergovernmental Cooperation Act of 1968 and the Federal Urban Land Use Act (42 U.S.C. 4201-4244; 40 U.S.C. 531-535);

(12) Public Buildings Cooperative Use Act of 1976, as amended (40 U.S.C. 490(a)(16)-(19), 601a and 612a);

(13) Public Buildings Amendments of 1988, Pub. L. 100-678, (102 Stat. 4049);

(14) National Historic Preservation Act of 1966 as amended (16 U.S.C. 461 *et seq.*);

(15) Executive Order 12072 of August 16, 1978 (43 FR 36869);

(16) Executive Order 12411 of March 29, 1983 (48 FR 13391);

(17) Executive Order 12512 of April 29, 1985 (50 FR 18453);

(18) Executive Order 13005 of May 21, 1996 (61 FR 26069); and

(19) Executive Order 13006 of May 21, 1996 (61 FR 26071).

§ 102-85.10 What is the scope of this part?

(a) This part describes GSA policy and principles for the assignment and occupancy of space under its control and the rights and obligations of GSA and the customer agencies that request or occupy such space pursuant to GSA Occupancy Agreements (OA).

(b) Space managed by agencies under delegation of authority from GSA is subject to the provisions of this part.

(c) This part is not applicable to:

(1) Licenses, permits or leases with non-Federal entities under the Public Buildings Cooperative Use Act (40 U.S.C. 490(a)(16-19)); or

(2) The disposal of surplus lease space under section 210(h)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(h)(2)).

§ 102-85.15 What are the basic policies for charging Rent for space and services?

(a) GSA will charge for space and services furnished by GSA (unless otherwise exempted by the Administrator of General Services) a Rent charge which will approximate commercial charges for comparable space and services. Rent for all assignments for GSA-controlled space will be priced according to the principles of the pricing policy in this part. These principles are reflected in the following elements of GSA Rent charges:

(1) "Shell" Rent based on approximate commercial charges for comparable space and services for Federally owned space (accomplished using appraisal procedures);

(2) Rent based on actual cost of the lease, including the costs (if any) of services not provided by the lessor, plus a GSA fee;

(3) Amortization of any tenant improvement allowance used;

(4) Any applicable real estate taxes, operating costs, parking, security and joint use fees; and

(5) For certain projects involving new construction or major renovation of Federally-owned buildings, a return on investment pricing approach if an appraisal-determined rental value does not provide a minimum return (OMB discount rate for calculating the

Federal Management Regulation

§ 102-85.35

present value of yearly costs plus 2%) on the cost of the prospective capital investment. Each specific use of Return on Investment (ROI) pricing must be approved by OMB and duly recorded in an Occupancy Agreement (OA) with the customer agency. Once the ROI methodology is employed to establish Rent for a capital investment, the ROI method must be retained for the duration of the OA term.

(b) Special services not included in the standard levels of service may be provided by GSA on a reimbursable basis. GSA may also furnish alterations on a reimbursable basis in buildings where GSA is responsible for alterations only.

(c) The financial terms and conditions under which GSA assigns, and a customer agency occupies, each block of GSA-controlled space, shall be documented in a written OA.

§ 102-85.20 What does an Occupancy Agreement (OA) do?

An OA defines GSA's relationship with each customer agency and:

(a) Establishes specific financial terms, provisions, rights, and obligations of GSA and its customer for each space assignment;

(b) Minimizes exposure to future unknown costs for both GSA and customer agencies;

(c) Stabilizes Rent payments to the extent reasonable and desired by customers; and

(d) Allows tailoring of space and related services to meet customer agency needs.

§ 102-85.25 What is the basic principle governing OAs?

The basic principle governing OAs is to adopt the private sector practice of capturing in a written document the business terms to which GSA and a customer agency agree concerning individual space assignments.

§ 102-85.30 Are there special rules for certain Federal customers?

Yes, in lieu of OAs, GSA is able to enter into agreements with customer agencies that reflect the parties particular needs. For example, the space and services provided to the U.S. House of Representatives and the U.S. Senate

are governed by existing memoranda of agreement (MOA). When there are conflicts between the provisions of this part and MOAs, the MOAs prevail.

§ 102-85.35 What definitions apply to this part?

The following definitions apply to this part:

Accept space or acceptance of space means a commitment from an agency to occupy specified GSA-controlled space.

Agency-controlled and/or operated space means:

(1) Space that is owned, leased, or otherwise controlled or operated by Federal agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended; and

(2) it also includes agency-acquired space for which acquisition authority has been delegated or otherwise granted to the agency by GSA. It does not include space covered by an OA.

Assign or assignment is defined in the definition for space assignment.

Building shell means the complete enveloping structure, the base-building systems, and the finished common areas (building common and floor common) of a building that bound the tenant areas.

Customer agency means any department, agency, or independent establishment in the Federal Government, including any wholly-owned corporation; 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 direction).

Emergency relocation is a customer move that results from an extraordinary event such as a fire, natural disaster, or immediate threat to the health and safety of occupants that renders a current space assignment unusable and requires that it be vacated, permanently or temporarily.

Federal Buildings Fund means the fund into which Rent charges and other revenues are deposited, and collections cited in section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (U.S.C. 490(j)), and from which monies are available

for expenditures for real property management and related activities in such amounts as are specified in annual appropriations acts without regard to fiscal year limitations.

Federally controlled space means workspace for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation. Such workspace excludes space owned or leased by private sector entities performing work on Government contracts.

Federally owned space means space, the title to which is vested in the United States Government or which will vest automatically according to an existing agreement.

Forced move means the involuntary physical relocation, from one space assignment to another, of a customer agency housed in GSA-controlled space initiated by another customer agency or by GSA, before the expiration of a lease or an OA term. (See also the definition of GSA-initiated move.)

General use space means all types of space other than “warehouse,” “parking,” or “unique” space, as defined elsewhere in this part. Examples of general use space are:

(1) Office and office-related space such as file areas, libraries, meeting rooms, computer rooms, mail rooms, training and conference, automated data processing operations, courtrooms, and judicial chambers; and

(2) Storage space that contains different quality and finishes from general use space, but that is within a building where predominantly general use space is located.

GSA-controlled space means Federally controlled space under the custody or control of GSA. It includes space for which GSA has delegated operational, maintenance, or protection authority to the customer agency.

GSA-delegated space (or GSA delegated building) means GSA-controlled space for which GSA has delegated operational, maintenance or protection authority to the customer agency.

GSA-initiated move means any relocation action in GSA-controlled space that:

(1) Is involuntary to the customer agency and required to be effective prior to the expiration of an effective OA, or in the case of leased space, prior to the expiration of the lease; or

(2) Is an emergency relocation initiated by GSA.

Initial space alteration (ISA). See definition of “tenant improvement.”

Initial space layout means the specific placement of workstations, furniture and equipment within new space assignments.

Inventory means a summary or itemized list of the real property, and associated descriptive information, that is under the control of a Federal agency.

Joint-use space means common space within a Federally controlled facility, not specifically assigned to any one agency, and available for use by multiple agencies, such as cafeterias, auditoriums, conference rooms, credit unions, visitor parking spaces, snack bars, certain wellness/physical fitness facilities, and child care centers.

Leased space means space for which the United States Government has a right of use and occupancy by virtue of having acquired a leasehold interest.

Non-cancelable space means space that, due to its layout, design, location, or other characteristics, is unlikely to be needed by another GSA customer agency. Typical conditions that might cause space to be defined as non-cancelable are:

(1) Special space construction features;

(2) Lack of any realistic Federal need for the space other than by the requesting agency; and

(3) Remote location or unusual term (short or long) desired by the agency.

Occupancy Agreement (OA) means a written agreement descriptive of the financial terms and conditions under which GSA assigns, and a customer agency occupies, the GSA-controlled space identified therein.

Parking or parking space means surface land, structures, or areas within structures designed and designated for the purpose of parking vehicles.

Personnel means the peak number of persons to be housed during a single shift, regardless of how many workstations are provided for them. In

addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees, budgeted vacancies, and employees of other agencies and organizations who are housed in a space assignment.

Portfolio leases mean long term or “master” leases, usually negotiated to house several agencies whose individual term requirements differ from the terms of the underlying GSA lease with the lessor, and from each other. These may also be leases housing single agencies, but which entail for GSA responsibilities (burdens and benefits) which mimic an ownership position, or equity rights, even though no equity interest or ownership liability exists. An example of the latter would be long term renewal options on a lease which, in order to enjoy, involve substantial capital outlays by GSA to improve the building infrastructure. In both these cases, GSA is assuming risks or capital expenditures outside of the conventions of single transactions or occupancies. Accordingly, for a portfolio lease, it is not appropriate merely to pass through to the customer agency(ies) the rental rate of the underlying GSA lease. Portfolio leases are treated for pricing purposes as owned space, with Rent set by appraisal.

Predominant use means the use to which the greatest portion of a location is put. Predominant use is determined by the Public Buildings Service (PBS), GSA, and will typically result in the designation of a location as one of four types of space—General Use, Warehouse, Unique, or Parking—even though some smaller portions of the space may be used for one or more of the other types of uses.

Rent means the amounts charged by GSA for space and related services to the customer agencies with tenancy in GSA-controlled space. The word “Rent” is capitalized to differentiate it from the contract “rent” that GSA pays lessors.

Rentable square footage means the amount of space as defined in “Building Owners and Managers Association (BOMA)/American National Standards Institute (ANSI) Standard Z65.1-1996.” The BOMA/ANSI standard also defines “gross,” “office area,” “floor com-

mon,” and “building common” areas. Any references to these terms in this part refer to the BOMA/ANSI standard definitions. This standard has been adopted in accordance with GSA’s interest in conforming its practices to nationally recognized industry standards to the extent possible.

NOTE TO THE DEFINITION OF RENTABLE SQUARE FOOTAGE: Rentable square footage generally includes square footage of areas occupied by customers plus a prorated share of floor common areas such as elevator lobbies, building corridors, public restrooms, utility closets, and machine rooms. Rentable square footage also includes a prorated share of building common areas located throughout the building. Examples of building common space include ground floor entrance lobby, enclosed atrium, loading dock, and mail room.

Request for space or *space request* means a written or electronically submitted document or an oral request, within which an agency’s space needs are summarized. A request for space is requisite for development of an OA. Thus, it must be submitted to GSA by a duly authorized official of the customer agency, and it must be accompanied by documentation of the customer agency’s ability to fund payment of required Rent charges.

Return on Investment (ROI) pricing is one possible methodology used to establish a Rent rate for certain owned space. Typically, ROI pricing is a Rent rate that ensures GSA a reasonable return on its cost to acquire and improve the asset. ROI pricing may be used where no other comparable commercial space is available or no other appraisal method would be appropriate. It may also be used in cases in which an appraisal-based rental rate will not meet GSA’s minimum return requirements for the planned level of investment.

Security fees mean Rent charges for building services provided by GSA’s Federal Protective Service. Security fees are comprised of basic and building specific charges.

(a) A basic security fee is assessed in all PBS-controlled properties where the Federal Protective Service (FPS) provides security services. The rate is set annually on a per-square-foot basis. The charge includes the following services:

- (1) General law enforcement on PBS-controlled property;
- (2) Physical security assessments;
- (3) Crime prevention and awareness training;
- (4) Advice and assistance to building security committees;
- (5) Intelligence sharing program;
- (6) Criminal investigation;
- (7) Assistance and coordination in Occupancy Emergency Plan development;
- (8) Coordination of mobilization and response to terrorist threat or civil disturbance;
- (9) Program administration for security guard contracts; and
- (10) Megacenter operations for monitoring building perimeter alarms and dispatching appropriate law enforcement response.

(b) The building specific security charge is comprised of two elements: Operating expenses and amortized capital costs. Building specific charges, whether operating expenses or capital costs, are distributed overall federal users by building or facility in direct proportion to each customer agency's percentage of federal occupancy. As with joint use charges, the distribution of building-specific charges among customer agencies is not re-adjusted for vacancy.

Space means a defined area within a building and/or parcel of land. (Personal property and furniture are not included.)

Space allocation standard (SAS) means a standard agreed upon by GSA and a customer agency, written in terms that permit nationwide or regional application, that is used as a basis for establishing that agency's space requirements. An SAS may describe special GSA and customer agency funding responsibilities, although such responsibilities will be covered in OAs for space assignments. An SAS may also be developed between GSA and customer agencies on a regional level to standardize or simplify transactions, provided that the terms of a regional SAS are consistent with the terms of that agency's national SAS and the terms of this part.

Space assignment or *assignments* means a transaction between GSA and a customer agency that results in a

customer agency's right to occupy certain GSA-controlled space, usually in return for customer agency payment(s) to GSA for use of the space. Space assignment rights, obligations, and responsibilities not covered in this part, or in the customer guides, are formalized in an OA.

Space planning means the process of using recognized professional techniques of planning, layout and interior design to determine the best internal location and the most efficient configuration for satisfying agency space needs.

Space program of requirements means a summary statement of an agency's space needs. These requirements will generally include information about location, square footage, construction requirements, and duration of the agency's space need. They may be identified in any format mutually agreeable to GSA and the agency.

Special space means space which has unusual architectural/construction features, requires the installation of special equipment, or requires disproportionately high or low costs to construct, maintain and/or operate as compared to office or storage space. Special space generally refers to space which has construction features, finishes, services, utilities, or other additional costs beyond those specified in the customer general allowance (e.g., courtrooms, laboratories).

Standard level of service. See §102-85.165 for the definition of standard level of service.

Telecommunications means electronic processing of information, either voice or data or both, over a wide variety of media, (e.g., copper wire, microwave, fiber optics, radio frequencies), between individuals or offices within a building (e.g., local area networks), between buildings, and between cities.

Tenant improvement (TI) means a finished component of an interior block of space. Tenant improvements represent additions to or alterations of the building shell that adapt the workspace to the specific uses of the customer. If made at initial occupancy, the TIs are known as initial space alterations or ISAs.

Federal Management Regulation

§ 102-85.55

Tenant improvement (TI) allowance means the dollar amount, including design, labor, materials, contractor costs (if contractors are used), management, and inspection, that GSA will spend to construct, alter, and finish space for customer occupancy (excluding personal property and furniture, which are customer agency responsibilities) at initial occupancy. The dollar amounts for the allowances are different for each agency and bureau to accommodate agencies' different mission needs. The dollar amounts also may vary by locations reflecting different costs in different markets. The PBS bill will only reflect the actual amount the customers spend, not the allowance. The amount of the TI allowance is determined by GSA. Agencies can request that GSA revise the TI allowance amount by project or categorically for an entire bureau. The cost of replacement of tenant improvements is borne by the customer agency.

Unique space means space for which there is no commercial market comparable (e.g., border stations).

Warehouse or warehouse space means space contained in a structure primarily intended for the housing of files, records, equipment, or other personal property, and is not primarily intended for housing personnel and office operations. Warehouse space generally is designed and constructed to lower specifications than office buildings, with features such as exposed ceilings, unfinished perimeter and few dividing partitions. Warehouse space also is usually heated to a lesser degree but not air-conditioned, and is cleaned to lesser standards than office space.

Workspace means Federally controlled space in buildings and structures (permanent, semi-permanent, or temporary) that provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it.

§ 102-85.40 What are the major components of the pricing policy?

The major components of the pricing policy are:

(a) An OA between a customer agency and GSA;

(b) Tenant improvement allowance; and

(c) The establishment of Rent the agency pays to GSA based on the OA for:

(1) Leased space, a pass-through to the customer agency of the underlying GSA lease contract costs, and a PBS fee; or

(2) GSA-owned space, Rent determined by appraisal.

Subpart B—Occupancy Agreement

§ 102-85.45 When is an Occupancy Agreement required?

An Occupancy Agreement (OA) is required for each customer agency's space assignment. The OA must be agreed to by GSA and the customer agency prior to GSA's commitment of funds for occupancy and formal assignment of space.

§ 102-85.50 When does availability of funding have to be certified?

The customer agency must sign an OA prior to GSA's making any major contractual commitments associated with the space request. Typically, this should occur at the earliest possible opportunity—i.e., when funds become available. However, in no event shall certification occur later than just prior to the award of the contract to a design architect in the case of Federal construction or renovation in Federally owned space or prior to the award of a lease. This serves as a customer agency's funding commitment unless certification is provided on another document.

§ 102-85.55 What are the terms and conditions included in an OA?

The terms and conditions are modeled after commercial practice. They are intended to reflect a full mutual understanding of the financial terms and agreement of the parties. The OA describes the actual space and services to be provided and all associated actual costs to the customer during the term of occupancy. The OA does not include any general provisions or terms contained in this part. OAs typically describe the following, depending on

§ 102-85.60

whether the space is leased or Federally owned:

- (a) Assigned square footage;
- (b) Shell Rent and term of occupancy;
- (c) Amortized amount of customer allowance used;
- (d) Operating costs and escalations;
- (e) One time charges; *e.g.*, lump sum payments by the customer;
- (f) Real estate tax and escalations;
- (g) Parking and escalations;
- (h) Additional/reduced services;
- (i) Security services and associated Rent;
- (j) Joint use space and associated Rent;
- (k) PBS fee;
- (l) Customer rights and provisions for occupancy after OA expiration;
- (m) Cancellation provisions if different from this part or the customer service guides;
- (n) Any special circumstances associated with the occupancy, such as environmental responsibilities, unusual use restrictions, or agreements with local authorities;
- (o) Emergency relocations;
- (p) Clauses specific to the agreement;
- (q) Other Rent, *e.g.*, charges for antenna sites, land;
- (r) Agency standard clauses; and
- (s) General clauses defining the obligations of both parties.

§ 102-85.60 Who can execute an OA?

Authorized GSA and customer agency officials who can commit or obligate the funds of their respective agencies can execute an OA. Higher level signatories may be appropriate from both agencies for space assignments in owned or leased space, that are unusual in size, location, duration, public interest, or other factors. Each agency decides its appropriate signatory level.

§ 102-85.65 How does an OA obligate the customer agency?

An OA obligates the executing customer agency to fund the current-year Rent obligation owed GSA, as well as to reimburse GSA for any other *bona fide* obligations that GSA may have incurred on behalf of the customer agency. Although the OA is an interagency agreement, memorializing the understanding of GSA and its customer

41 CFR Ch. 102 (7-1-02 Edition)

agency, the OA may not be construed as obligating future year customer agency funds until they are legally available. A multi-year OA commitment assumes the customer agency will seek the necessary funding through budget and appropriations processes.

§ 102-85.70 Are the standard OA terms appropriate for non-cancelable space?

Yes, most of the standard terms apply; however, the right to cancel upon a 4-month (120 day) notice is not available. See § 102-85.35 for the definition of non-cancelable space.

§ 102-85.75 When can space assignments be terminated?

(a) Customer agencies can terminate any space assignments, except those designated as non-cancelable, with the following stipulations:

(1) The agency must give GSA written notice at least four months prior to termination.

(2) The agency is responsible for reimbursing GSA for the unpaid balance of the cost of tenant improvements, generally prior to GSA releasing the agency from the space assignment. In the event the customer agency received a rent concession (*e.g.*, free rent) at the inception of the assignment as part of the consideration for the entire lease term, then the amount of the concession applicable to the remaining term must be repaid to GSA.

(3) If the space to be vacated is ready for occupancy by another customer and marketable, GSA accepts the termination of assignment.

(4) If the agency has vacated all of the space and removed all personal property and equipment from the space by the cancellation date in the written notice, the agency will be released effective that date from further Rent payments.

(5) An agency may terminate a GSA space assignment with less than a four-month advance written notice to GSA, if:

(i) Either GSA or the terminating agency has identified another agency customer for the assigned space and that substitute agency wants and is

Federal Management Regulation

§ 102-85.115

able to fully assume the Rent payments due from the terminating agency; and

(ii) The terminating agency continues to pay Rent until the new agency starts paying Rent.

(b) GSA can terminate space assignments according to GSA regulations for emergency or forced moves.

(c) OAs terminate automatically at expiration.

§ 102-85.80 Who is financially responsible for expenses resulting from tenant non-performance?

The customer agencies are financially responsible for expenses incurred by the Government as a result of any failure on their part to fulfill a commitment outlined in an OA or other written agreements in advance of, or in addition to, the OA. Customer agencies are also financially responsible for revised design costs and any additional costs resulting from changes to space requirements or space layouts made by the agency after a lease, alteration, design, or construction contract has been awarded by GSA.

§ 102-85.85 What if a customer agency participates in a consolidation?

If an agency agrees to participate in a consolidation upon expiration of an OA, the relocation expenses will be addressed in the new OA negotiated by GSA and the customer agency. The customer agency generally pays such costs.

Subpart C—Tenant Improvement Allowance

§ 102-85.90 What is a tenant improvement allowance?

A tenant improvement (TI) allowance enables the customer agency to design, configure and build out space to support its program operations. It is based on local market construction costs and the specific bureau's historical use of space. (See also the definition at § 102-85.35.)

§ 102-85.95 Who pays for the TI allowance?

The customer agency pays for the amount of the tenant improvement allowance actually used.

§ 102-85.100 How does a customer agency pay for tenant improvements?

To pay for the installation of tenant improvements, the customer agency may spend an amount not to exceed the tenant allowance. The amount spent by the customer agency for TIs is amortized over a period of time specified in the OA, not to exceed the useful life of the improvements. This amortization payment is in addition to the shell rent and services.

§ 102-85.105 How does an agency pay for customer alterations that exceed the TI allowance?

Amounts exceeding the TI allowance are paid in a one-time lump sum and are not amortized over the term of the occupancy. The agency certifies lump sum funds are available prior to GSA proceeding with the work.

§ 102-85.110 Can the allowance amount be changed?

The GSA schedule of allowances for new assignments is adjusted annually for design and construction cost changes. As the need arises, GSA may adjust an agency or bureau's TI allowance. GSA may also adjust a TI allowance for a specific project, if conditions warrant. This decision is solely GSA's. In addition, the customer agency may waive any part or all of its customization allowance in the case of a new space assignment. In the case of backfill space (also known as relet space), the customer agency can also waive any part or all of the tenant general allowance, if the customer agency will use the existing tenant improvements, with or without modifications.

Subpart D—Rent Charges

§ 102-85.115 How is the Rent determined?

Unless an exemption is granted under the authority of the Administrator of General Services, the Rent charged approximates commercial charges for comparable space and space-related services as follows:

(a) Generally, Rent for Federally owned space provided by GSA is based on market appraisals of fully serviced rental values for the predominant use

to which space in a building is put; *e.g.*, general use, warehouse use, and parking use. In cases where market appraisals are not practical; *e.g.*, in cases involving unique space or when market comparables are not available, GSA may establish Rent on the basis of alternate commercial practices. See the discussion of alternate valuation methods in § 102-85.125. Amortization of tenant improvements, parking fees, and security charges are calculated separately and added to the appraised shell Rent to establish the Rent charge. Customer agencies also pay for a pro rata share of joint use space.

(b) Generally, Rent for space leased by GSA is based on the actual cost of the lease, including the costs (if any) of services not provided by the lessor, plus a GSA fee, and security charges and parking (if not in the lease).

(1) The Rent is based on the terms and conditions of the OA, starting with the shell Rent.

(2) In addition to the shell Rent, the Rent includes amortization of TI allowances used, real estate taxes, operating costs, extra services, parking, GSA fee for its services, and charges for security, joint-use, and other applicable rental charges (*e.g.*, antenna site, land, wareyard).

§ 102-85.120 What is shell Rent?

Shell Rent is that portion of GSA Rent charged for the building envelope and land. (See § 102-85.35 for the definition of building shell.)

§ 102-85.125 What alternate methods may be used to establish Rent in Federally-owned space?

Alternate methods of establishing Rent are based on private sector models. They include, but are not limited to:

(a) Return on investment (ROI) approach or a similar cost recovery method used when market comparables are not available and/or GSA must “build to suit” to fulfill customer agency requirements; *e.g.*, border stations; and

(b) Rent schedules for the right to use rooftops and other floor areas not suitable for workspace; *e.g.*, antenna sites and signage.

§ 102-85.130 How are exemptions from Rent granted?

Exemptions from Rent are rare. However, the Administrator of General Services may exempt any GSA customer from Rent after a determination that application of Rent would not be feasible or practical. Customer agency requests for exemptions must be addressed to the Administrator of General Services and submitted in accordance with GSA Order PBS 4210.1, “Rent Exemption Procedures,” dated December 20, 1991, or in accordance with any superseding GSA order. A copy of the order may be obtained from the Office of Portfolio Management, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102-85.135 What if space and services are provided by other executive agencies?

Any executive agency other than GSA providing space and services is authorized to charge the occupant for the space and services at rates approved by the Administrator of General Services and the Director of the Office of Management and Budget. If space and services are of the type provided by the Administrator of General Services, the executive agency providing the space and services must credit the monies derived from any fees or charges to the appropriation or fund initially charged for providing the space or services, as prescribed by Subsection 210(k) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(k)).

§ 102-85.140 How are changes in Rent reflected in OAs?

(a) If Rent changes in ways that are identified in the OA, then no change to the OA is required. Typically, OAs state that certain components of Rent are subject to annual escalation; *e.g.*, operating expenses, real estate taxes, parking charges, the basic security charge, and building-specific security operating and amortized capital expenses which do not entail a change in service level. Also, in Federally-owned space, OAs state that the shell rent is re-marked to market every five years. In leased space, the OA will identify any programmed changes in the lease

contract rent (such as pre-set increases or steps in the contract rent rate) that will translate into a change in the customer agency's Rent. Changes in Rent specified in OAs will serve as notice to agencies of future Rent changes for budgeting purposes. For a discussion of budgeting for Rent, see § 102-85.160.

(b) Changes to Rent other than those identified in paragraph (a) of this section typically require an amended OA. There are many events that might occasion a change in Rent, and an amended OA, such as:

(1) An agency expands or contracts at an existing location;

(2) PBS agrees to fund additional tenant improvements that are then amortized over the remaining OA term, or over an extended OA term;

(3) Upon physical re-measurement, the true square footage of the space assignment is found to be different from the square footage of record;

(4) The amount of joint use space in the building changes;

(5) The level of building-specific security services changes; or

(6) PBS undertakes new capital expenditures for new or enhanced security countermeasures.

§ 102-85.145 When are customer agencies responsible for Rent charges?

(a) When a customer agency occupies cancelable space, it is responsible for Rent charges until:

(1) The date of release specified in the OA, or until the date space is actually vacated, whichever occurs later; or

(2) Four months after having provided GSA written notice of release; or

(3) The date space is actually vacated, whenever occupancy extends beyond the date agreed upon under either paragraph (a)(1) or (2) of this section.

(b) When a customer agency releases non-cancelable space, it is responsible for all attributable Rent and other space charges until the OA expires. This responsibility is mitigated to the extent that GSA is able to assign the space to another user or dispose of it. (See § 102-85.65 How does an OA obligate the customer agency?)

(c) When a customer agency commits to occupy space in an OA or other binding document, but never occupies that space, that agency is responsible for:

(1) Non-cancelable space: Rent payments due for the space until the OA expires, unless GSA can mitigate; or

(2) All other space: Either GSA's space charges for 4 months plus the cost of tenant improvements or GSA's actual costs, whichever is less.

§ 102-85.150 How will Rent charges be reflected on the customer agency's Rent bill?

Rent charges are billed monthly, in arrears, based on an annual rate which is divided by 12. Billing commences the first month in which the agency occupies the space for more than half of the month, and ends in the last month the agency occupies the space.

§ 102-85.155 What does a customer agency do if it does not agree with a Rent bill?

(a) If a customer agency does not agree with the way GSA has determined its Rent obligation (*e.g.*, the agency does not agree with GSA's space classification, appraised Rent, or the allocation of space), the agency may appeal its Rent bill to GSA.

(b) GSA will not increase or otherwise change Rent for any assignment, except as agreed in an OA, in the case of errors, or when the OA is amended. However, customer agencies may at any time request a regional review of the measurement, classification, service levels provided, or charges assessed that pertain to the space assignment without resorting to formal procedures. Such requests do not constitute appeals and should be directed to the appropriate GSA Regional Administrator.

(c) If a customer agency still wants to pursue a formal appeal of Rent charges, they may do so, but with the following limitations:

(1) Terms, including rates, to which the parties agree in an OA are not appealable;

(2) In leased space, the contract rent passed through from the underlying lease cannot be appealed;

(3) In GSA-owned space, when the fully-serviced shell Rent is established through appraisal, the appraised rate must exceed comparable commercial square foot rates by 20 percent. When

§ 102-85.160

shell Rent in owned space is established on the basis of ROI at the inception of an OA, and the customer agency executes the OA, then the ROI rate cannot later be appealed. Other components of Rent that are established on the basis of actual cost—*eg.*, amortization of TIs and building specific security charges—also cannot be appealed.

(4) Additionally, the customer agency is required to compare its assigned space with other space in the surrounding community that:

- (i) Is available in similar size block of space in a comparable location;
- (ii) Is comparable in quality to the space provided by GSA;
- (iii) Provides similar service levels as part of the charges;
- (iv) Contains similar contractual terms, conditions, and escalations clauses; and
- (v) Represents a lease transaction completed at a similar point in time.

(5) Data from at least three comparable locations will be necessary to demonstrate a market trend sufficient to warrant revising an appraised Rent charge.

(d) A customer agency filing an appeal for a particular location or building must develop documentation supporting the appeal and file the appeal with the appropriate Regional Administrator. The GSA regional office will verify all pertinent information and documentation supporting the appeal. The GSA Regional Administrator will accept or deny the appeal and will notify the appealing agency of his or her ruling.

(e) A further appeal may be filed by the customer agency's headquarters level officials with the Commissioner, Public Buildings Service, if equitable resolution has not been obtained from the initial appeal. A head of a customer agency may further appeal to the Administrator of the General Services. Documentation of the procedures followed for prior resolution must accompany an appeal to the Administrator. Decisions made by the Administrator are final.

(f) Adjustments of Rent resulting from reviews and appeals will be effective in the month that the agency submitted a properly documented appeal. Adjustments in Rent made under this

41 CFR Ch. 102 (7-1-02 Edition)

section remain in effect for the remainder of the 5-year period in which the charges cited in the OA were applicable.

§ 102-85.160 How does a customer agency know how much to budget for Rent?

GSA normally provides customer agencies an estimate of Rent increases approximately 2 months prior to the agencies' Office of Management and Budget (OMB) submission for the fiscal year in which GSA will charge Rent. This gives the affected customer agencies an opportunity to budget for an increase or decrease. However, GSA must obtain the concurrence of OMB for such changes prior to notifying customer agencies. In the event GSA is unable to provide timely notice of a future Rent increase, customer agencies are nonetheless obligated to pay the increased Rent amount. For existing assignments in owned buildings, GSA charges for fully serviced shell Rent, in aggregate, shall not exceed the bureau level budget estimates provided to the customer agencies annually. This provision does not apply to:

- (a) New assignments;
- (b) Changes in current assignments;
- (c) Leased space;
- (d) New tenant improvement amortization;
- (e) Building specific security costs; and
- (f) New amortization of capital expenditures under ROI pricing due to changes in scope of proposed projects or repair and/or replacement of building components

Subpart E—Standard Levels of Service

§ 102-85.165 What are standard levels of service?

(a) The standard levels of service covered by GSA Rent are comparable to those furnished in commercial practice. They are based on the effort required to service the customer agency's space for a 5-day week (Monday to Friday), one-shift regular work schedule. GSA will provide adequate building startup services, before the beginning of the customer's regular one-shift

Federal Management Regulation

§ 102-85.200

work schedule, and shutdown services after the end of this schedule.

(b) Without additional charge, GSA customers may use their assigned space and supporting automatic elevator systems, lights and small office and business machines including personal computers on an incidental basis, unless specified otherwise in the OA.

§ 102-85.170 Can flexitime and other alternative work schedules cost the customer agency more?

Yes, GSA customers who extend their regular work schedule by a system of flexible hours shall reimburse GSA for its approximate cost of the additional services required.

§ 102-85.175 Are the standard level services for cleaning, mechanical operation, and maintenance identified in an OA?

Unless specified otherwise in the OA, standard level services for cleaning, mechanical operation, and maintenance shall be provided in accordance with the GSA standard level of services as defined in § 102-85.165, and in the PBS Customer Guide to Real Property. A copy of the guide may be obtained from the General Services Administration, Office of Business Performance (PX), 1800 F Street, NW., Washington, DC 20405.

§ 102-85.180 Can there be other standard services?

GSA may provide additional services to its customers at the levels and times deemed by the Administrator of General Services to be necessary for efficient operations and proper servicing of space under the assignment responsibility of GSA.

§ 102-85.185 Can space be exempted from the standard levels of service?

Yes, customer agencies may be excused from paying for standard service levels for space assignments when:

(a) In GSA-delegated space, the customer agency provides for these services itself and thus pays Rent minus charges for these services; or

(b) In rare instances, standard service levels may be waived by the Administrator of General Services in instances where charging for such standard services would not be feasible or practical,

e.g., in assignments of limited square footage or functional use.

§ 102-85.190 Can GSA Rent be adjusted when standard levels of service are performed by other customer agencies?

Customer agencies that arrange and pay separately for the costs of standard level services normally covered by GSA Rent will receive a Rent credit or other type of reimbursement by GSA for the amount GSA would have charged for such services. The type of reimbursement is at GSA's discretion. The reimbursement is limited to the amount included for the services in GSA Rent. Approval to perform or contract for such services must be obtained in advance by the customer agency from the appropriate GSA regional office.

Subpart F—Special Services

§ 102-85.195 Does GSA provide special services?

Yes, GSA provides special services on a cost-reimbursable basis:

(a) In GSA-controlled space, GSA may provide for special services that cannot be separated from the building or space costs (inseparable services, such as utilities, which are not individually metered). GSA's estimate of the special service cost is the basis for the bill amount. The bill amount for separable special services is either based on a previously agreed upon fixed price or the actual cost, including a fee for GSA's services.

(b) GSA can also provide special services to other Federal agencies in agency-controlled and operated space on a cost-reimbursable basis.

Subpart G—Continued Occupancy, Relocation and Forced Moves

§ 102-85.200 Can customer agencies continue occupancy of space or must they relocate at the end of an OA?

The answer is contingent upon whether the customer agency is in Federally owned or leased space.

(a) Unless stated otherwise in the OA, a customer agency within a GSA controlled, Federally owned building

§ 102-85.205

has automatic occupancy rights at the end of the OA term for occupied space. However, a new OA must be negotiated.

(b) In leased space, the OA generally reflects the provisions of the underlying lease and will specify whether or not renewal options are available. If the OA does not include a renewal option, customer agencies should assume relocation would be necessary upon OA expiration, and budget for it. Further, renewal options are not, in themselves, a guarantee of continued occupancy at that location. In some cases, the renewal rate is substantially above market or the option was not part of the initial price evaluation for the occupancy. In such cases, GSA may be required to run a competition for the replacement lease, and a relocation may ensue. Nonetheless, it is also possible that GSA may execute a succeeding lease with the incumbent lessor, in which case there is no move.

(c) GSA and customer agencies should initiate discussions at least 18-20 months in advance of OA expiration to address an action for the replacement or continued occupancy of the existing space assignment. This allows both agencies time to budget for the work and the cost.

§ 102-85.205 What happens if a customer agency continues occupancy after the expiration of an OA?

A mutual goal of GSA and its customers is to have current OAs in place for all space assignments. However, provisions are necessary to cover the GSA and customer relationship if an OA expires prior to execution of a mutually desired succeeding agreement. Because the risks, liabilities, and consequences of a customer's continued occupancy depend on whether the assigned space is leased or Federally owned, different provisions in the following table apply:

41 CFR Ch. 102 (7-1-02 Edition)

HOLDOVER TENANCY—CUSTOMER AGENCY RESPONSIBILITIES IN THE EVENT OF TENANT DELAY IN VACATING SPACE

In leased space	In federally owned space
To pay those costs associated with lease contract, GSA fee, and damages/claims, arising from changes in GSA contract costs which are caused by the tenant's delay.	To pay Rent as determined by GSA's pricing policy, as described in this part, and those added costs to GSA (claims, damages, changes, etc.) resulting from the tenant-caused delay.

§ 102-85.210 What if a customer agency has to relocate?

If the agency or GSA determines relocation is necessary at the expiration of an OA for either Federally owned or leased space, the customer agency is responsible for all costs associated with relocation at that time.

§ 102-85.215 What if another customer agency forces a GSA customer to move?

If a GSA customer agency, or GSA, forces the relocation of another GSA customer agency prior to the expiration of the customer's OA, the "forcing" agency is responsible:

(a) For all reasonable costs associated with the relocation of the agency being "forced" to move, including architectural-engineering design, move coordination and physical relocation, telecommunications and ADP equipment relocation and installation;

(b) To GSA for all of the relocated agency's unpaid tenant improvements, if any; and

(c) To the customer agency for the undepreciated amount of any lump sum payment that was already made by the agency for alterations.

§ 102-85.220 Can a customer agency forced to relocate waive the reimbursements?

Yes, a customer agency forced to relocate can waive some or all of the reimbursements from the forcing agency

Federal Management Regulation

§ 102-85.225

that are prescribed in § 102-85.215. However, a relocated customer agency cannot waive the requirement for the forcing customer agency to reimburse GSA for unpaid tenant improvements. If GSA is the “forcing” agency, it is responsible for the same costs as any other forcing customer agency.

§ 102-85.225 What are the funding responsibilities for relocations resulting from emergencies?

(a) In emergencies, swift remedies, including the possible relocation of a customer agency to alternate space, are required. The remedies may include requests for funding authorizations from OMB and Congress. GSA may

serve as the central coordinator of such remedies.

(b) Funding responsibility will vary by situation. If a customer agency is only temporarily displaced from its space, GSA typically covers the cost of temporary set-up in a provisional location. If the agency is obliged to relocate permanently, an OA will be prepared which will address all terms of the occupancy. In such cases, new tenant improvements will be constructed which can be amortized over the life of a new occupancy term, and a new Rent rate will be developed.

PART 102-86—102-92 [RESERVED]

SUBCHAPTER D—TRANSPORTATION

PART 102-116—GENERAL [RESERVED]

PART 102-117—TRANSPORTATION MANAGEMENT

Subpart A—General

Sec.

- 102-117.5 What is transportation management?
- 102-117.10 What is the scope of this part?
- 102-117.15 To whom does this part apply?
- 102-117.20 Are any agencies exempt from this part?
- 102-117.25 What definitions apply to this part?

Subpart B—Acquiring Transportation or Related Services

- 102-117.30 What choices do I have when acquiring transportation or related services?
- 102-117.35 What are the advantages and disadvantages to using GSA's tender of service?
- 102-117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?
- 102-117.45 What other factors must I consider when using another agency's contract or rate tender?
- 102-117.50 What are the advantages and disadvantages of contracting directly with a TSP under FAR?
- 102-117.55 What are the advantages and disadvantages of using a rate tender?
- 102-117.60 What is the importance of the terms and conditions in a rate tender or other transportation document?
- 102-117.65 What terms and conditions must all rate tenders or contracts include?
- 102-117.70 Where do I find more information on terms and conditions?
- 102-117.75 How do I reference the rate tender on transportation documents?
- 102-117.80 How are rate tenders filed?
- 102-117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?
- 102-117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?
- 102-117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?

Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

- 102-117.100 What business rules must I consider before acquiring transportation or related services?
- 102-117.105 What does best value mean when routing a shipment?
- 102-117.110 What is satisfactory service?
- 102-117.115 How do I calculate total delivery costs?
- 102-117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?
- 102-117.125 How detailed must I describe property for shipment when communicating to a TSP?
- 102-117.130 Must I select TSPs who use alternative fuels?

Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

- 102-117.135 What are the international transportation restrictions?
- 102-117.140 What is cargo preference?
- 102-117.145 What are coastwise laws?
- 102-117.150 What do I need to know about coastwise laws?
- 102-117.155 Where do I go for further information about coastwise laws?

Subpart E—Shipping Freight

- 102-117.160 What is freight?
- 102-117.165 What shipping process must I use for freight?
- 102-117.170 What reference materials are available to ship freight?
- 102-117.175 What factors do I consider to determine the mode of transportation?
- 102-117.180 What transportation documents must I use to ship freight?
- 102-117.185 Where must I send a copy of the transportation documents?
- 102-117.190 Where do I file a claim for loss or damage to property?
- 102-117.195 Are there time limits affecting filing of a claim?

Subpart F—Shipping Hazardous Material (HAZMAT)

- 102-117.200 What is HAZMAT?
- 102-117.205 What are the restrictions for transporting HAZMAT?
- 102-117.210 Where can I get guidance on transporting HAZMAT?

Federal Management Regulation

§ 102–117.10

Subpart G—Shipping Household Goods

- 102–117.215 What are household goods (HHG)?
- 102–117.220 What choices do I have to ship HHG?
- 102–117.225 What is the difference between a contract or rate tender and a commuted rate system?
- 102–117.230 Must I compare costs between a contract or rate tender and the commuted rate system before choosing which method to use?
- 102–117.235 How do I get a cost comparison?
- 102–117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?
- 102–117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?
- 102–117.250 What are my responsibilities after shipping the household goods?
- 102–117.255 What actions may I take if the TSP's performance is not satisfactory?
- 102–117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?
- 102–117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Subpart H—Performance Measures

- 102–117.270 What are agency performance measures for transportation?

Subpart I—Transportation Service Provider (TSP) Performance

- 102–117.275 What performance must I expect from a TSP?
- 102–117.280 What aspects of the TSP's performance are important to measure?
- 102–117.285 What are my choices if a TSP's performance is not satisfactory?
- 102–117.290 What is the difference between temporary nonuse, suspension and debarment?
- 102–117.295 Who makes the decisions on temporary nonuse, suspension and debarment?
- 102–117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?
- 102–117.305 Where do I go for information on the process for suspending or debarring a TSP?
- 102–117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?
- 102–117.315 Who must I notify on suspension or debarment of a TSP?

Subpart J—Representation Before Regulatory Body Proceedings

- 102–117.320 What is a transportation regulatory body proceeding?
- 102–117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?
- 102–117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?
- 102–117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?
- 102–117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?

Subpart K—Reports

- 102–117.345 Is there a requirement for me to report to GSA on my transportation activities?
- 102–117.350 How will GSA use reports I submit?

Subpart L—Governmentwide Transportation Policy Council (GTPC)

- 102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?
- 102–117.360 Where can I get more information about the GTPC?

AUTHORITY: 31 U.S.C. 3726; 40 U.S.C. 481, *et seq.*

SOURCE: 65 FR 60061, Oct. 6, 2000, unless otherwise noted.

Subpart A—General

§ 102–117.5 What is transportation management?

Transportation management is agency oversight of the physical movement of commodities, household goods (HHG) and other freight from one location to another by a transportation service provider (TSP).

§ 102–117.10 What is the scope of this part?

This part addresses shipping freight and household goods worldwide. Freight is property or goods transported as cargo. Household goods are not Government property, but are employees' personal property entrusted to the Government for shipment.

§ 102-117.15

§ 102-117.15 To whom does this part apply?

This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3), except those indicated in § 102-117.20.

§ 102-117.20 Are any agencies exempt from this part?

(a) The Department of Defense is exempted from this part by an agreement under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 *et seq.*), except for the rules to debar or suspend a TSP under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4).

(b) Subpart D of this part, covering household goods, does not apply to the uniformed service members, under Title 37 of the United States Code, "Pay and Allowances of the Uniformed Services," including the uniformed service members serving in civilian agencies such as the U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.

§ 102-117.25 What definitions apply to this part?

The following definitions apply to this part:

Accessorial charges are charges for services other than line-haul charges. Examples of accessorial charges are:

(1) Inside delivery, redelivery, re-consignment, and demurrage or detention for freight; and

(2) Packing, unpacking, appliance servicing, blocking and bracing, and special handling for household goods.

Agency is any executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Nuclear Regulatory Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as

41 CFR Ch. 102 (7-1-02 Edition)

a receipt of goods and documentary evidence of title.

Cargo preference is the legal requirement for all, or a portion of all, ocean-borne cargo to be transported on U.S. flag vessels.

Commutated rate system is the system under which an agency may allow its employees to make their own household goods shipping arrangements, and apply for reimbursement.

Consignee is the person or agent to whom freight or household goods are delivered.

Consignor is the person or firm that ships freight or household goods to a consignee.

Contract of carriage is a contract between the TSP and the agency to transport freight or household goods.

Debarment is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any contract under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.406).

Demurrage is the penalty charge to an agency for delaying the agreed time to load or unload shipments by rail or ocean TSPs.

Detention is the penalty charge to an agency for delaying the agreed time to load or unload shipments by truck TSPs.

Electronic commerce is an electronic technique for carrying out business transactions (ordering and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Foreign flag vessel is any vessel of foreign registry including vessels owned by U.S. citizens but registered in a foreign country.

Freight is property or goods transported as cargo.

Government bill of lading (GBL) is the Optional Form 1103 or 1203, the transportation document used as a receipt of goods, evidence of title, and a contract of carriage.

Governmentwide Transportation Policy Council (GTPC) is an interagency forum to help GSA formulate policy. It provides agencies managing transportation programs a forum to exchange information and ideas to solve common

Federal Management Regulation

§ 102–117.30

problems. For further information on this council, see web site: <http://www.policyworks.gov/transportation>.

Hazardous material is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*). When transported internationally hazardous material may be classified as “Dangerous Goods.” All such freight must be marked in accordance with applicable regulations and the carrier must be notified in advance.

Household goods (HHG) are the personal effects of Government employees and their dependents.

Line-Haul is the movement of freight between cities excluding pickup and delivery service.

Mode is a method of transportation, such as rail, motor, air, water, or pipeline.

Rate schedule is a list of freight rates, taxes, and charges assessed against non-household goods cargo.

Rate tender is an offer a TSP sends to an agency, containing service rates and charges.

Receipt is a written or electronic acknowledgment by the consignee or TSP as to when and where a shipment was received.

Release/declared value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of released value must be shown on any applicable tariff, tender, or other document covering the shipment.

Reparation is a payment to or from an agency to correct an improper transportation billing involving a TSP. Improper routing, overcharges or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Suspension is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a contract or rate tender (48 CFR part 9, subpart 9.407).

Transportation document is any executed agreement for transportation service, such as bill of lading, Government bill of lading (GBL), Government travel request (GTR) or transportation ticket.

Transportation service provider (TSP) is any party, person, agent or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

U.S. flag air carrier is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49 U.S.C. 40118, 48 CFR part 47, subpart 47.4).

U.S. flag vessel is a commercial vessel, registered and operated under the laws of the U.S., owned and operated by U.S. citizens, and used in commercial trade of the United States.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

Subpart B—Acquiring Transportation or Related Services

§ 102–117.30 What choices do I have when acquiring transportation or related services?

When you acquire transportation or related services you may:

- (a) Use the GSA tender of service;
- (b) Use another agency’s contract or rate tender with a TSP only if allowed by the terms of that agreement or if the Administrator of General Services delegates authority to another agency to enter an agreement available to other Executive agencies;
- (c) Contract directly with a TSP using the acquisition procedures under the Federal Acquisition Regulation (FAR) (48 CFR chapter 1); or
- (d) Negotiate a rate tender under a Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

§ 102-117.35 What are the advantages and disadvantages of using GSA's tender of service?

(a) It is an advantage to use GSA's tender of service when you want to:

(1) Use GSA's authority to negotiate on behalf of the Federal Government and take advantage of the lower rates and optimum service that result from a larger volume of business;

(2) Use a uniform tender of service; and

(3) Obtain assistance with loss and damage claims.

(b) It is a disadvantage to use GSA's tender of service when:

(1) You want an agreement that is binding for a longer term than the GSA tender of service;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) You do not want to pay for the GSA administrative service charge as a participant in the GSA rate tender programs.

§ 102-117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?

It is advantageous to use another agency's contract or rate tender for transportation services when the contract or rate tender offers better or equal value than otherwise available to you.

§ 102-117.45 What other factors must I consider when using another agency's contract or rate tender?

When using another agency's contract or rate tender, you must:

(a) Assure that the contract or rate tender meets any special requirements unique to your agency;

(b) Pay any other charges imposed by the other agency for external use of their contract or rate tender; and

(c) Ensure the terms of the other agency's contract or rate tender allow you to use it.

§ 102-117.50 What are the advantages and disadvantages of contracting directly with a TSP under the FAR?

(a) The FAR is an advantage to use when:

(1) You ship consistent volumes in consistent traffic lanes;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) Your contract office is able to handle the requirement.

(b) The FAR may be a disadvantage when you:

(1) Cannot prepare and execute a FAR contract within your time frame; or

(2) Have recurring shipments between designated places, but do not expect sufficient volume to obtain favorable rates.

§ 102-117.55 What are the advantages and disadvantages of using a rate tender?

(a) Using a rate tender is an advantage when you:

(1) Have a shipment that must be made within too short a time frame to identify or solicit for a suitable contract; or

(2) Have shipments recurring between designated places, but do not expect sufficient volume to obtain favorable rates.

(b) Using a rate tender may be a disadvantage when:

(1) You have sufficient time to use the FAR and this would achieve better results;

(2) You require transportation service for which no rate tender currently exists; or

(3) A TSP may revoke or terminate the tender on short notice.

§ 102-117.60 What is the importance of terms and conditions in a rate tender or other transportation document?

Terms and conditions are important to protect the Government's interest and establish the performance and standards expected of the TSP. It is important to remember that terms and conditions are:

(a) Negotiated between the agency and the TSP before movement of any item; and

(b) Included in all contracts and rate tenders listing the services the TSP is offering to perform at the cost presented in the rate tender or other transportation document.

NOTE TO § 102-117.60: You must reference the negotiated contract or rate tender on all transportation documents. For further information see § 102-117.65.

Federal Management Regulation

§ 102-117.85

§ 102-117.65 What terms and conditions must all rate tenders or contracts include?

All rate tenders and contracts must include, at a minimum, the following terms and conditions:

- (a) Charges cannot be prepaid.
- (b) Charges are not paid at time of delivery.
- (c) Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

(d) To qualify for the rates specified in a rate tender filed under the provisions of the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712), property must be shipped by or for the Government and the rate tender must indicate the Government is either the consignor or the consignee and include the following statement:

Transportation is for the (agency name) and the total charges paid to the transportation service provider by the consignor or consignee are for the benefit of the Government.

(e) When using a rate tender for transportation under a cost-reimbursable contract, include the following statement in the rate tender:

Transportation is for the (agency name), and the actual total transportation charges paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).

(f) Other terms and conditions that may be specific to your agency or the TSP such as specialized packaging requirements or HAZMAT. For further information see the "U.S. Government Freight Transportation Handbook," available by contacting:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://www.fss.gsa.gov/transtrav>

§ 102-117.70 Where do I find more information on terms and conditions?

You may find more information about terms and conditions in part 102-118 of this chapter, or the "U.S. Government Freight Transportation Handbook" (see § 102-117.65(f)).

§ 102-117.75 How do I reference the rate tender on transportation documents?

To ensure proper reference of a rate tender on all shipments, you must show the applicable rate tender number and carrier identification on all transportation documents, such as, section 13712 quotation, "ABC Transportation Company, Tender Number * * *".

§ 102-117.80 How are rate tenders filed?

- (a) The TSP must file a written rate tender with your agency.
- (b) You must send two copies of the rate tender to:

General Services Administration
Federal Supply Service, Audit Division
(FBA)
1800 F Street, NW.
Washington, DC 20405
<http://www.fss.gsa.gov/transtrav>

§ 102-117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?

(a) A Government bill of lading (GBL), Optional Forms 1103 and 1203, is a controlled document that conveys specific terms and conditions to protect the Government interest and serves as the contract of carriage.

(b) A bill of lading, sometimes referred to as a commercial bill of lading, is the document used as a receipt of goods and documentary evidence of title.

(c) Use a bill of lading for Government shipments if the specific terms and conditions of a GBL are included in any contract or rate tender (see § 102-117.65) and the bill of lading makes reference to that contract or rate tender (see § 102-117.75 and the "U.S. Government Freight Transportation Handbook").

§ 102-117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?

You may use the GBL, Optional Forms 1103 or 1203, to acquire transportation services offered under a contract or rate tender until March 31, 2002. The GBL will completely phase out for domestic shipments on March 31, 2002, and be replaced by commercial bills of lading. After March 31, 2002, you may use the GBL only for international shipments (including domestic offshore shipments).

[65 FR 60061, Oct. 6, 2001, as amended at 66 FR 48812, Sept. 24, 2001]

§ 102-117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?

Bills of lading and purchase orders are the transportation documents you use to acquire freight, household goods and other transportation services after the GBLs retire for domestic shipments. Terms and conditions in § 102-117.65 and the "U.S. Government Freight Transportation Handbook" will still be required. For further information on payment methods, see part 102-118 of this chapter.

Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

§ 102-117.100 What business rules must I consider before acquiring transportation or related services?

When acquiring transportation or related services you must:

- (a) Use the mode or individual transportation service provider (TSP) that provides the overall best value to the agency. For more information, see §§ 102-117.105 through 102-117.130;
- (b) Demonstrate no preferential treatment to any TSP when arranging for transportation services except on international shipments. Preference on international shipments must be given to United States registered commercial vessels and aircraft;
- (c) Ensure that small businesses receive equal opportunity to compete for

all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(d) Encourage minority-owned businesses and women-owned businesses, to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(e) Review the need for insurance. Generally, the Government is self-insured; however, there are instances when the Government will purchase insurance coverage for Government property. An example may be cargo insurance for international air cargo shipments to cover losses over those allowed under the International Air Transport Association (IATA) or for ocean freight shipments; and

(f) Consider the added requirements on international transportation found in subpart D of this part.

§ 102-117.105 What does best value mean when routing a shipment?

Best value to your agency when routing a shipment means using the mode or individual TSP providing the best combination of satisfactory service factors.

§ 102-117.110 What is satisfactory service?

You should consider the following factors in assessing whether a TSP offers satisfactory service:

- (a) Availability and suitability of the TSP's equipment;
- (b) Adequacy of shipping and receiving facilities at origin and destination;
- (c) Adequacy of pickup and/or delivery service;
- (d) Availability of accessorial and special services;
- (e) Estimated time in transit;
- (f) Record of past performance of the TSP including accuracy of billing;
- (g) Capability of warehouse equipment and storage space; and
- (h) Experience of company, management, and personnel to perform the requirements.

Federal Management Regulation

§ 102-117.150

§ 102-117.115 How do I calculate total delivery costs?

You calculate total delivery costs for a shipment by considering all costs related to the shipping or receiving process, such as packing, blocking, bracing, drayage, loading and unloading, and transporting.

§ 102-117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?

You must assure that small businesses, socially or economically disadvantaged and women-owned TSPs have equal opportunity to provide the transportation or related services.

§ 102-117.125 How detailed must I describe property for shipment when communicating to a TSP?

You must describe property in enough detail for the TSP to determine the type of equipment or any special precautions necessary to move the shipment. Details might include weight, volume, measurements, routing, hazardous cargo, or special handling designations.

§ 102-117.130 Must I select TSPs who use alternative fuels?

No, but, whenever possible, you are encouraged to select TSPs that use alternative fuel vehicles and equipment, under policy in the Clean Air Act Amendments of 1990 (42 U.S.C. 7612) or the Energy Policy Act of 1992 (42 U.S.C. 13212).

Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

§ 102-117.135 What are the international transportation restrictions?

Several statutes mandate the use of U.S. flag carriers for international shipments (see 48 CFR part 47, subparts 47.4 and 47.5). For example:

- (a) Arrangements for international air transportation services must follow the Fly America Act (International Air Transportation Fair Competitive Practices Act of 1974) (49 U.S.C. 40118); and
- (b) International movement of property by water is subject to the cargo

preference laws (see 46 CFR part 381 and 48 CFR part 47, subpart 47.5), which require the use of a U.S. flag carrier when service is available. The Maritime Administration (MARAD) monitors agency compliance of these laws. All Government shippers must send a rated copy of the ocean carrier's bill of lading to MARAD within 30 days of loading aboard a vessel to:

Department of Transportation
Maritime Commission
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
<http://www.marad.dot.gov/>
Tel. 1-800-9US-FLAG
E-mail: cargo@marad.dot.gov

NOTE TO § 102-117.135(B): Non-vessel Operations Common Carrier (NVOCC) or freight forwarder bills of lading are not acceptable (see 48 CFR part 47).

§ 102-117.140 What is cargo preference?

Cargo preference is the statutory requirement that all, or a portion of all, ocean-borne cargo that moves internationally be transported on U.S. flag vessels. Deviations or waivers from the cargo preference laws must be approved by:

Department of Transportation
Maritime Administration
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
<http://www.marad.dot.gov/>
Tel. 1-800-9US-FLAG
e-mail: cargo@marad.dot.gov

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102-117.145 What are coastwise laws?

Coastwise laws refer to laws governing shipment of freight, household goods and passengers by water between points in the United States or its territories. The purpose of these laws is to assure reliable shipping service and the existence of a maritime capability in times of war or national emergency (see section 27 of the Merchant Marine Act of 1920, 46 App. U.S.C. 883, 19 CFR 4.80).

§ 102-117.150 What do I need to know about coastwise laws?

You need to know that:

§ 102-117.155

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign port, must travel in U.S. Maritime Administration (MARAD) authorized U.S. Flag vessels;

(b) There are exceptions and limits for the U.S. Island territories and possessions in the Atlantic and Pacific Oceans (see § 102-117.155); and

(c) The Secretary of the Treasury is empowered to impose monetary penalties against agencies that violate the coastwise laws.

§ 102-117.155 Where do I go for further information about coastwise laws?

You may refer to 46 App. U.S.C. 883, 19 CFR 4.80, DOT MARAD, the U.S. Coast Guard or U.S. Customs Service for further information on exceptions to the coastwise laws.

Subpart E—Shipping Freight

§ 102-117.160 What is freight?

Freight is property or goods transported as cargo.

§ 102-117.165 What shipping process must I use for freight?

Use the following shipping process for freight:

(a) For domestic shipments you must:

- (1) Identify what you are shipping;
- (2) Decide if the cargo is HAZMAT, classified, or sensitive that may require special handling or placards;
- (3) Decide mode;
- (4) Check for applicable contracts or rate tenders within your agency or other agencies, including GSA;
- (5) Select the most efficient and economical TSP that gives the best value;
- (6) Prepare shipping documents; and
- (7) Schedule pickup, declare released value and ensure prompt delivery with a fully executed receipt, and oversee shipment.

(b) For international shipments you must follow all the domestic procedures and, in addition, comply with the cargo preference laws. For specific information, see subpart D of this part.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-117.170 What reference materials are available to ship freight?

(a) The following is a partial list of handbooks and guides available from GSA:

- (1) U.S. Government Freight Transportation Handbook;
- (2) Limited Authority to Use Commercial Forms and Procedures;
- (3) Submission of Transportation Documents; and
- (4) Things to be Aware of When Routing or Receiving Freight Shipments.

(b) For the list in paragraph (a) of the section and other reference materials, contact:

(1) General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW, Washington, DC 20405, <http://www.fss.gsa.gov/transtrav>; or

(2) General Services Administration, Federal Supply Service, 1500 Bannister Road, Kansas City, MO 64131, <http://www.kc.gsa.gov/fsstt>.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102-117.175 What factors do I consider to determine the mode of transportation?

Your shipping urgency and any special handling requirements determine which mode of transportation you select. Each mode has unique requirements for documentation, liability, size, weight and delivery time. HAZMAT, radioactive, and other specialized cargo may require special permits and may limit your choices.

§ 102-117.180 What transportation documents must I use to ship freight?

To ship freight:

- (a) By land (domestic shipments), use a bill of lading;
- (b) By land (international shipments), use the GBL;
- (c) By ocean, use an ocean bill of lading, when suitable, along with the GBL; and
- (d) By air, use a bill of lading.

§ 102-117.185 Where must I send a copy of the transportation documents?

(a) You must forward an original copy of all transportation documents to:

Federal Management Regulation

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405

(b) For all property shipments subject to the cargo preference laws (see §102-117.140), a copy of the ocean carrier's bill of lading, showing all freight charges, must be sent to MARAD within 30 days of vessel loading.

§ 102-117.190 Where do I file a claim for loss or damage to property?

You must file a claim for loss or damage to property with the TSP.

§ 102-117.195 Are there time limits affecting filing of a claim?

Yes, several statutes limit the time for administrative or judicial action against a TSP. Refer to part 102-118 of this chapter for more information and the time limit tables.

Subpart F—Shipping Hazardous Material (HAZMAT)

§ 102-117.200 What is HAZMAT?

HAZMAT is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety and property when transported in commerce. Therefore, there are restrictions on transporting HAZMAT (49 U.S.C. 5103 *et seq.*).

§ 102-117.205 What are the restrictions for transporting HAZMAT?

Agencies that ship HAZMAT are subject to the Environmental Protection Agency and the Department of Transportation regulations, as well as applicable State and local government rules and regulations.

§ 102-117.210 Where can I get guidance on transporting HAZMAT?

The Secretary of Transportation prescribes regulations for the safe transportation of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. You may also call the HAZMAT information hotline at 1-800-467-4922

§ 102-117.220

(Washington, DC area, call 202-366-4488).

Subpart G—Shipping Household Goods

§ 102-117.215 What are household goods (HHG)?

Household goods (HHG) are the personal effects of Government employees and their dependents.

§ 102-117.220 What choices do I have to ship HHG?

(a) You may choose to ship HHG by:

(1) Using the commuted rate system;
(2) GSA's Centralized Household Goods Traffic Management Program (CHAMP);

(3) Contracting directly with a TSP, (including a relocation company that offers transportation services) using the acquisition procedures under the Federal Acquisition Regulation (FAR) (see §102-117.35);

(4) Using another agency's contract with a TSP (see §§102-117.40 and 102-117.45);

(5) Using a rate tender under the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712) (see §102-117.35).

(b) As an alternative to the choices in paragraph (a) of this section, you may request the Department of State to assist with shipments of HHG moving to, from, and between foreign countries or international shipments originating in the continental United States. The nearest U.S. Embassy or Consulate may assist with arrangements of movements originating abroad. For further information contact:

Department of State
Transportation Operations
2201 C Street, NW.
Washington, DC 20520

NOTE TO §102-117-220: Agencies must use the commuted rate system for civilian employees who transfer between points inside the continental United States unless it is evident from the cost comparison that the Government will incur a savings (\$100 or more) using another choice listed. The use of

§ 102-117.225

household goods rate tenders is not authorized when household goods are shipped under the commuted rate system.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102-117.225 What is the difference between a contract or a rate tender and a commuted rate system?

(a) Under a contract or a rate tender, the agency prepares the bill of lading and books the shipment. The agency is the shipper and pays the TSP the applicable charges. If loss or damage occurs, the agency may either file a claim on behalf of the employee directly with the TSP, or help the employee in filing a claim against the TSP.

(b) Under the commuted rate system an employee arranges for shipping HHG and is reimbursed by the agency for the resulting costs. Use this method only within the continental United States (not Hawaii or Alaska). The agency reimburses the employee according to the Commuted Rate Schedule published by the GSA. The Commuted Rate Schedule (without rate table) is available on the Internet at <http://www.policyworks.gov>.

(c) For rate table information or a subscription for the Commercial Relocation Tariff contact:

American Moving and Storage Association
1611 Duke Street
Alexandria, VA 22314-3482
Tel. 703-683-7410

(d) For further information or assistance, you may contact:

General Services Administration
National Customer Service Center
1500 Bannister Road
Kansas City, MO 64131
<http://www.kc.gsa.gov/fsstt>

§ 102-117.230 Must I compare costs between a contract or a rate tender and the commuted rate system before choosing which method to use?

Yes, you must compare the cost between a contract or a rate tender, and the commuted rate system before you make a decision.

§ 102-117.235 How do I get a cost comparison?

(a) You may calculate a cost comparison internally according to 41 CFR 302-8.3.

41 CFR Ch. 102 (7-1-02 Edition)

(b) You may request GSA to perform the cost comparison if you participate in the CHAMP program by sending GSA the following information as far in advance as possible (preferably 30 calendar days):

- (1) Name of employee;
- (2) Origin city, county and State;
- (3) Destination city, county, and State;
- (4) Date of household goods pick up;
- (5) Estimated weight of shipments;
- (6) Number of days storage-in-transit (if applicable); and
- (7) Other relevant data.

(c) For more information on cost comparisons contact:

General Services Administration
Federal Supply Service
1500 Bannister Road
Kansas City, MO 64131
<http://www.kc.gsa.gov/fsstt>

NOTE TO §102-117.235(c): GSA may charge an administrative fee for agencies not participating in the CHAMP program.

§ 102-117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?

(a) Your agency is responsible for reimbursing the employee what it would cost the Government to ship the employee's HHG by the most cost-effective means available or the employee's actual moving expenses, whichever is less.

(b) The employee is liable for the additional cost when the cost of transportation arranged by the employee is more than what it would cost the Government.

NOTE TO §102-117.240: For more information on how to ship household goods, refer to 41 CFR 302-8.3.

§ 102-117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?

You must counsel employees that they may be liable for all costs above the amount reimbursed by the agency if they select a TSP that charges more than provided under the Commuted Rate Schedule.

Federal Management Regulation

§ 102-117.275

§ 102-117.250 What are my responsibilities after shipping the household goods?

(a) Each agency should develop an evaluation survey for the employee to complete following the move.

(b) Under the CHAMP program, you must counsel employees to fill out their portion of the GSA Form 3080, Household Goods Carrier Evaluation Report. This form reports the quality of the TSP's performance. After completing the appropriate sections of this form, the employee must send it to the bill of lading issuing officer who in turn will complete the form and forward it to:

General Services Administration
National Customer Service Center
1500 Bannister Rd.
Kansas City, MO 64131
<http://www.kc.gsa.gov/fsstt>

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102-117.255 What actions may I take if the TSP's performance is not satisfactory?

If the TSP's performance is not satisfactory, you may place a TSP in temporary nonuse, suspended status, or debarred status. For more information on doing this, see subpart I of this part and the FAR (48 CFR 9.406-3 and 9.407-3).

§ 102-117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?

Regarding the TSP's liability for loss or damage claims, you must:

(a) Advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance;

(b) Inform the employee about the procedures to file claims for loss and damage to HHG with the TSP; and

(c) Counsel employees, who have a loss or damage to their HHG that exceeds the amount recovered from a TSP, on procedures for filing a claim against the Government for the difference. Agencies may compensate employees up to \$40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723 (41 CFR 302-8.2(f)).

§ 102-117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Yes, several statutes limit the time for filing claims or taking other administrative or judicial action against a TSP. Refer to part 102-118 of this chapter for information on claims.

Subpart H—Performance Measures

§ 102-117.270 What are agency performance measures for transportation?

(a) Agency performance measures are indicators of how you are supporting your customers and doing your job. By tracking performance measures you can report specific accomplishments and your success in supporting the agency mission. The Government Performance and Results Act (GPRA) of 1993 (31 U.S.C. 1115) requires agencies to develop business plans and set up program performance measures.

(b) Examples of performance measurements in transportation would include how well you:

(1) Increase the use of electronic commerce;

(2) Adopt industry best practices and services to meet your agency requirements;

(3) Use TSPs with a track record of successful past performance or proven superior ability;

(4) Take advantage of competition in moving agency freight and household goods;

(5) Assure that delivery of freight and household goods is on time against measured criteria; and

(6) Create simplified procedures to be responsive and adaptive to the customer needs and concerns.

Subpart I—Transportation Service Provider (TSP) Performance

§ 102-117.275 What performance must I expect from a TSP?

You must expect the TSP to provide consistent and satisfactory service to meet your agency transportation needs.

§ 102-117.280 What aspects of the TSP's performance are important to measure?

Important TSP performance measures may include, but are not limited to the:

- (a) TSP's percentage of on-time deliveries;
- (b) Percentage of shipments that include overcharges or undercharges;
- (c) Percentage of claims received in a given period;
- (d) Percentage of returns received on-time;
- (e) Percentage of shipments rejected;
- (f) Percentage of billing improprieties;
- (g) Average response time on tracing shipments;
- (h) TSP's safety record (accidents, losses, damages or misdirected shipments) as a percentage of all shipments;
- (i) TSP's driving record (accidents, traffic tickets and driving complaints) as a percentage of shipments; and
- (j) Percentage of customer satisfaction reports on carrier performance.

§ 102-117.285 What are my choices if a TSP's performance is not satisfactory?

You may choose to place a TSP in temporary nonuse, suspension, or debarment if performance is unsatisfactory.

§ 102-117.290 What is the difference between temporary nonuse, suspension and debarment?

(a) Temporary nonuse is limited to your agency and initiated by the agency transportation officers for a period not to exceed 90 days for:

- (1) Willful violations of the terms of the rate tender;
- (2) Persistent or willful failure to meet requested packing and pickup service;
- (3) Failure to meet required delivery dates;
- (4) Violation of Department of Transportation (DOT) hazardous material regulations;
- (5) Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property;
- (6) Improper routing of property;

(7) Subjecting your shipments to unlawful seizure or detention by failing to pay debts;

(8) Operating without legal authority;

(9) Failure to settle claims according to Government regulations; or

(10) Repeated failure to comply with regulations of DOT, Surface Transportation Board, State or local governments or other Government agencies.

(b) Suspension is disqualifying a TSP from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. A TSP may be suspended on adequate evidence of:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State anti-trust statutes;

(3) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(4) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocated for the Government.

(c) Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. A TSP may be debarred for the following reasons:

(1) Failure of a TSP to take the necessary corrective actions within the period of temporary nonuse; or

(2) Conviction of or civil judgment for any of the causes for suspension.

§ 102-117.295 Who makes the decisions on temporary nonuse, suspension and debarment?

(a) The transportation officer may place a TSP in temporary nonuse for a period not to exceed 90 days.

(b) The serious nature of suspension and debarment requires that these sanctions be imposed only in the public

Federal Management Regulation

§ 102-117.335

interest for the Government's protection and not for purposes of punishment. Only the agency head or his/her designee may suspend or debar a TSP.

§ 102-117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?

(a) Temporary nonuse does not go beyond the agency.

(b) GSA compiles and maintains a current list of all suspended or debarred TSPs and periodically distributes the list to all agencies and the General Accounting Office.

§ 102-117.305 Where do I go for information on the process for suspending or debarring a TSP?

Refer to the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4) for policies and procedures governing suspension and debarment of a TSP.

§ 102-117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?

(a) You must set up a program consistent with your agency's internal record retention procedures to document the placement of TSPs in a nonuse, suspended or debarred status.

(b) For temporary nonuse, your records must contain the following information:

(1) Name, address, and Standard Carrier Alpha Code and Taxpayer Identification Number of each TSP placed in temporary nonuse status;

(2) The duration of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts showing the existence of such a cause;

(4) Information and arguments in opposition to the temporary nonuse period sent by the TSP or its representative; and

(5) The reviewing official's determination about keeping or removing temporary nonuse status.

(c) For suspended or debarred TSPs, your records must include the same information as paragraph (b) of this section and you must:

(1) Assure your agency does not award contracts to a suspended or debarred TSP; and

(2) Notify GSA (see § 102-117.315).

§ 102-117.315 Who must I notify on suspension or debarment of a TSP?

Agencies must report monthly any suspension or debarment actions to:

General Services Administration
Office of Acquisition Policy (MV)
1800 F Street, NW.
Washington, DC 20405
<http://www.epls.arnet.gov>;

Subpart J—Representation Before Regulatory Body Proceedings

§ 102-117.320 What is a transportation regulatory body proceeding?

A transportation regulatory body proceeding is a hearing before a transportation governing entity, such as a State public utility commission, the Surface Transportation Board, or the Federal Maritime Commission. The proceeding may be at the Federal or State level depending on the activity regulated.

§ 102-117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?

Generally, no executive agency may appear on its own behalf in any proceeding before a transportation regulatory body, unless the Administrator of General Services delegates the authority to the agency. The statutory authority for the Administrator of General Services to participate in regulatory proceedings on behalf of all Federal agencies is in section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)(4)).

§ 102-117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?

GSA will delegate authority when it does not have the expertise, or when it is outside of GSA's purview, to make a determination on an issue such as a protest of rates, routings or excessive charges.

§ 102-117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?

You must send your request for delegation with enough detail to explain

§ 102-117.340

the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405

§ 102-117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?

(a) GSA has oversight of all public utilities used by the Federal Government including transportation. There are specific regulatory requirements a TSP must meet at the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) GSA has a list of TSPs, which meet certain criteria regarding insurance and safety, approved by DOT. You must furnish GSA with an affidavit to determine if the TSP meets the basic qualification to protect the Government's interest. As an oversight mandate, GSA coordinates this function. For further information contact:

General Services Administration
Federal Supply Service
Office of Transportation and Property Management
Travel and Transportation Management Division (FBL)
Crystal Mall Bldg. #4, Room 814
Washington, DC 20406

Subpart K—Reports

§ 102-117.345 Is there a requirement for me to report to GSA on my transportation activities?

(a) Currently, there is no requirement for reporting to GSA on your transportation activities. However, GSA will work with your agency and other agencies to develop reporting requirements and procedures. In particular, GSA will develop a Governmentwide transportation reporting system by October 1, 2002.

(b) Preliminary reporting requirements may include an electronic formatted report on the quantity shipped, locations (from and to) and cost of transportation. The following categories are examples:

(1) Dollar amount spent for transportation;

41 CFR Ch. 102 (7-1-02 Edition)

- (2) Volume of weight shipped;
- (3) Commodities shipped;
- (4) HAZMAT shipped;
- (5) Mode used for shipment;
- (6) Location of items shipped (international or domestic); and
- (7) Domestic subdivided by East and West (Interstate 85).

§ 102-117.350 How will GSA use reports I submit?

(a) Reporting on transportation and transportation related services will provide GSA with:

(1) The ability to assess the magnitude and key characteristics of transportation within the Government (*e.g.*, how much agencies spend; what type of commodity is shipped; *etc.*);

(2) Data to analyze and recommend changes to policies, standards, practices, and procedures to improve Government transportation; and

(3) A better understanding of how your activity relates to other agencies and your influence on the Governmentwide picture of transportation services.

(b) In addition, this information will assist you in showing your management the magnitude of your agency's transportation program and the effectiveness of your efforts to control cost and improve service.

Subpart L—Governmentwide Transportation Policy Council (GTPC)

§ 102-117.355 What is the Governmentwide Transportation Policy Council (GTPC)?

The Office of Governmentwide Policy sponsors a Governmentwide Transportation Policy Council (GTPC) to help agencies establish, improve, and maintain effective transportation management policies, practices and procedures. The council:

(a) Collaborates with private and public stakeholders to develop valid performance measures and promote solutions that lead to effective results; and

(b) Provides assistance in developing the Governmentwide transportation reporting system (see § 102-117.345).

Federal Management Regulation

Pt. 102-118

§ 102-117.360 Where can I get more information about the GTPC?

For more information about the GTPC, contact:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
<http://www.policyworks.gov/transportation>

PART 102-118—TRANSPORTATION PAYMENT AND AUDIT

Subpart A—General

INTRODUCTION

Sec.

- 102-118.5 What is the purpose of this part?
- 102-118.10 What is a transportation audit?
- 102-118.15 What is a transportation payment?
- 102-118.20 Who is subject to this part?
- 102-118.25 Does GSA still require my agency to submit its overall transportation policies for approval?
- 102-118.30 Are Government corporations bound by this part?

DEFINITIONS

- 102-118.35 What definitions apply to this part?

Subpart B—Ordering and Paying for Transportation and Transportation Services

- 102-118.40 How does my agency order transportation and transportation services?
- 102-118.45 How does a transportation service provider (TSP) bill my agency for transportation and transportation services?
- 102-118.50 How does my agency pay for transportation services?
- 102-118.55 What administrative procedures must my agency establish for payment of freight, household goods, or other transportation services?
- 102-118.60 To what extent must my agency use electronic commerce?
- 102-118.65 Can my agency receive electronic billing for payment of transportation services?
- 102-118.70 Must my agency make all payments via electronic funds transfer?
- 102-118.75 What if my agency or the TSP does not have an account with a financial institution or approved payment agent?
- 102-118.80 Who is responsible for keeping my agency's electronic commerce transportation billing records?

- 102-118.85 Can my agency use a Government contractor issued charge card to pay for transportation services?
- 102-118.90 If my agency orders transportation and/or transportation services with a Government contractor issued charge card or charge account citation, is this subject to prepayment audit?
- 102-118.95 What forms can my agency use to pay transportation bills?
- 102-118.100 What must my agency ensure is on each SF 1113?
- 102-118.105 Where can I find the rules governing the use of a Government Bill of Lading?
- 102-118.110 Where can I find the rules governing the use of a Government Transportation Request?
- 102-118.115 Must my agency use a GBL?
- 102-118.120 Must my agency use a GTR?
- 102-118.125 What if my agency uses a TD other than a GBL?
- 102-118.130 Must my agency use a GBL for express, courier, or small package shipments?
- 102-118.135 Where are the mandatory terms and conditions governing the use of bills of lading?
- 102-118.140 What are the major mandatory terms and conditions governing the use of GBLs and bills of lading?
- 102-118.145 Where are the mandatory terms and conditions governing the use of passenger transportation documents?
- 102-118.150 What are the major mandatory terms and conditions governing the use of passenger transportation documents?
- 102-118.155 How does my agency handle supplemental billings from the TSP after payment of the original bill?
- 102-118.160 Who is liable if my agency makes an overpayment on a transportation bill?
- 102-118.165 What must my agency do if it finds an error on a TSP bill?
- 102-118.170 Will GSA continue to maintain a centralized numbering system for Government transportation documents?

Subpart C—Use of Government Billing Documents

TERMS AND CONDITIONS GOVERNING ACCEPTANCE AND USE OF A GOVERNMENT BILL OF LADING (GBL) OR GOVERNMENT TRANSPORTATION REQUEST (GTR) (UNTIL FORM RETIREMENT)

- 102-118.175 Must my agency prepare for the GBL retirement?
- 102-118.180 Must my agency prepare for the GTR retirement?
- 102-118.185 When buying freight transportation, must my agency reference the applicable contract or tender on the bill of lading (including GBLs)?

Pt. 102-118

41 CFR Ch. 102 (7-1-02 Edition)

- 102-118.190 When buying passenger transportation, must my agency reference the applicable contract?
- 102-118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?
- 102-118.200 Can a TSP demand advance payment for the transportation charges submitted on a bill of lading (including GBL)?
- 102-118.205 May my agency pay an agent functioning as a warehouseman for the TSP providing service under the bill of lading?
- 102-118.210 May my agency use bills of lading other than the GBL for a transportation shipment?
- 102-118.215 May my agency pay a TSP any extra fees to pay for the preparation and use of the GBL or GTR?
- 102-118.220 If a transportation debt is owed to my agency by a TSP because of loss or damage to property, does my agency report it to GSA?
- 102-118.225 What constitutes final receipt of shipment?
- 102-118.230 What if my agency creates or eliminates a field office approved to prepare transportation documents?

AGENCY RESPONSIBILITIES WHEN USING GOVERNMENT BILLS OF LADING (GBLS) OR GOVERNMENT TRANSPORTATION REQUESTS (GTRs)

- 102-118.235 Must my agency keep physical control and accountability of the GBL and GTR forms or GBL and GTR numbers?
- 102-118.240 How does my agency get GBL and GTR forms?
- 102-118.245 How does my agency get an assigned set of GBL or GTR numbers?
- 102-118.250 Who is accountable for the issuance and use of GBL and GTR forms?
- 102-118.255 Are GBL and GTR forms numbered and used sequentially?

QUOTATIONS, TENDERS OR CONTRACTS

- 102-118.260 Must my agency send all quotations, tenders, or contracts with a TSP to GSA?

Subpart D—Prepayment Audits of Transportation Services

AGENCY REQUIREMENTS FOR PREPAYMENT AUDITS

- 102-118.265 What is a prepayment audit?
- 102-118.270 Must my agency establish a prepayment audit program?
- 102-118.275 What must my agency consider when designing and implementing a prepayment audit program?
- 102-118.280 What advantages does the prepayment audit offer my agency?

- 102-118.285 What options for performing a prepayment audit does my agency have?
- 102-118.290 Must every electronic and paper transportation bill undergo a prepayment audit?
- 102-118.295 What are the limited exceptions to every bill undergoing a prepayment audit?
- 102-118.300 How does my agency fund its prepayment audit program?
- 102-118.305 Must my agency notify the TSP of any adjustment to the TSP's bill?
- 102-118.310 Must my agency prepayment audit program establish appeal procedures whereby a TSP may appeal any reduction in the amount billed?
- 102-118.315 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?
- 102-118.320 What information must be on transportation bills which have completed my agency's prepayment audit?

MAINTAINING AN APPROVED PROGRAM

- 102-118.325 Must I get approval for my agency's prepayment audit program?
- 102-118.330 What are the elements of an acceptable prepayment audit program?
- 102-118.335 What does the GSA Audit Division consider when verifying an agency prepayment audit program?
- 102-118.340 How does my agency contact the GSA Audit Division?
- 102-118.345 If my agency chooses to change an approved prepayment audit program, does the program need to be re-approved?

LIABILITY FOR CERTIFYING AND DISBURSING OFFICERS

- 102-118.350 Does establishing a prepayment audit system or program change the responsibilities of the certifying officers?
- 102-118.355 Does a prepayment audit waiver, change any liabilities of the certifying officer?
- 102-118.360 What relief from liability is available for the certifying official under a postpayment audit?
- 102-118.365 Do the requirements of a prepayment audit change the disbursing official's liability for overpayment?
- 102-118.370 Where does relief from prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

WAIVERS FROM MANDATORY PREPAYMENT AUDIT

- 102-118.375 Who has the authority to grant a waiver of the prepayment audit requirement?
- 102-118.380 How does my agency apply for a waiver from the prepayment audit requirement?
- 102-118.385 What must a waiver request include?

Federal Management Regulation

Pt. 102-118

- 102-118.390 On what basis does GSA grant a waiver to the prepayment audit requirement?
- 102-118.395 How long will GSA take to respond to a waiver request?
- 102-118.400 Must my agency renew a waiver of the prepayment audit requirements?
- 102-118.405 Are my agency's prepayment audited transportation bills subject to periodic postpayment audit oversight from the GSA Audit Division?

SUSPENSION OF AGENCY PREPAYMENT AUDIT PROGRAMS

- 102-118.410 Can GSA suspend my agency's prepayment audit program?

Subpart E—Postpayment Transportation Audits

- 102-118.415 Will the widespread mandatory use of prepayment audits eliminate postpayment audits?
- 102-118.420 Can the Administrator of General Services waive the postpayment auditing provisions of this subpart?
- 102-118.425 Is my agency allowed to perform a postpayment audit on our transportation bills?
- 102-118.430 What information must be on my agency's transportation bills submitted for a postpayment audit?
- 102-118.435 What procedures does GSA use to perform a postpayment audit?
- 102-118.440 What are the postpayment audit responsibilities and roles of the GSA Audit Division?
- 102-118.445 Must my agency pay for a postpayment audit when using the GSA Audit Division?

Subpart F—Claims and Appeal Procedures

GENERAL AGENCY INFORMATION FOR ALL CLAIMS

- 102-118.450 Can a TSP file a transportation claim against my agency?
- 102-118.445 What is the time limit for a TSP to file a transportation claim against my agency?
- 102-118.460 What is the time limit for my agency to file a court claim with a TSP for freight charges, reparations, and loss or damage to the property?
- 102-118.465 Must my agency pay interest on a disputed amount claimed by a TSP?
- 102-118.470 Are there statutory time limits for a TSP on filing an administrative claim with the GSA Audit Division?
- 102-118.475 Does interest apply after certification of payment of claims?
- 102-118.480 How does my agency settle disputes with a TSP?
- 102-118.485 Is there a time limit for my agency to issue a decision on disputed claims?

- 102-118.490 What if my agency fails to settle a dispute within 30 days?
- 102-118.495 May my agency appeal a decision by the General Services Board of Contract Appeals (GSBCA)?
- 102-118.500 How does my agency handle a voluntary refund submitted by a TSP?
- 102-118.505 Must my agency send a voluntary refund to the Treasurer of the United States?
- 102-118.510 Can my agency revise or alter a GSA Form 7931, Certificate of Settlement?
- 102-118.515 Does my agency have any recourse not to pay a Certificate of Settlement?
- 102-118.520 Who is responsible for determining the standards for collection, compromise, termination, or suspension of collection action on any outstanding debts to my agency?
- 102-118.525 What are my agency's responsibilities for verifying the correct amount of transportation charges?
- 102-118.530 Will GSA instruct my agency's disbursing offices to offset unpaid TSP billings?
- 102-118.535 Are there principles governing my agency's TSP debt collection procedures?
- 102-118.540 Who has the authority to audit, settle accounts, and/or start collection action for all transportation services provided for my agency?

TRANSPORTATION SERVICE PROVIDER (TSP) FILING REQUIREMENTS

- 102-118.545 What information must a TSP claim include?
- 102-118.550 How does a TSP file an administrative claim using EDI or other electronic means?
- 102-118.555 Can a TSP file a supplemental administrative claim?
- 102-118.560 What is the required format that a TSP must use to file an administrative claim?
- 102-118.565 What documentation is required when filing an administrative claim?

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR PREPAYMENT AUDITS

- 102-118.570 If my agency denies the TSP's challenge to the Statement of Difference, may the TSP appeal?
- 102-118.575 If a TSP disagrees with the decision of my agency, can the TSP appeal?
- 102-118.580 May a TSP appeal a prepayment audit decision of the GSA Audit Division?
- 102-118.585 May a TSP appeal a prepayment audit decision of the GSBCA?
- 102-118.590 May my agency appeal a prepayment audit decision of the GSA Audit Division?

§ 102–118.5

102–118.595 May my agency appeal a prepayment audit decision by the GSBICA?

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR POSTPAYMENT AUDITS

102–118.600 When a TSP disagrees with a Notice of Overcharge resulting from a postpayment audit, what are the appeal procedures?

102–118.605 What if a TSP disagrees with the Notice of Indebtedness?

102–118.610 Is a TSP notified when GSA allows a claim?

102–118.615 Will GSA notify a TSP if they internally offset a payment?

102–118.620 How will a TSP know if the GSA Audit Division disallows a claim?

102–118.625 Can a TSP request a reconsideration of a settlement action by the GSA Audit Division?

102–118.630 How must a TSP refund amounts due to GSA?

102–118.635 Can the Government charge interest on an amount due from a TSP?

102–118.640 If a TSP fails to pay or to appeal an overcharge, what actions will GSA pursue to collect the debt?

102–118.645 Can a TSP file an administrative claim on collection actions?

102–118.650 Can a TSP request a review of a settlement action by the Administrator of General Services?

102–118.655 Are there time limits on a TSP request for an administrative review by the GSBICA?

102–118.660 May a TSP appeal a postpayment audit decision of the GSBICA?

102–118.665 May my agency appeal a postpayment audit decision by the GSBICA?

TRANSPORTATION SERVICE PROVIDER (TSP) NON-PAYMENT OF A CLAIM

102–118.670 If a TSP cannot immediately pay a debt, can they make other arrangements for payment?

102–118.675 What recourse does my agency have if a TSP does not pay a transportation debt?

AUTHORITY: 31 U.S.C. 3726; and 40 U.S.C. 481, *et seq.*

SOURCE: 65 FR 24569, Apr. 26, 2000, unless otherwise noted.

Subpart A—General

INTRODUCTION

§ 102–118.5 What is the purpose of this part?

The purpose of this part is to interpret statutes and other policies that

41 CFR Ch. 102 (7–1–02 Edition)

assure that payment and payment mechanisms for agency transportation services are uniform and appropriate. This part communicates the policies clearly to agencies and transportation service providers (TSPs). (See § 102–118.35 for the definition of TSP.)

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related bills. The audit must examine the validity, propriety, and conformity of the charges with tariffs, quotations, agreements, or tenders, as appropriate. Each agency must ensure that its internal transportation audit procedures prevent duplicate payments and only allow payment for authorized services, and that the TSP's bill is complete with required documentation.

§ 102–118.15 What is a transportation payment?

A transportation payment is a payment made by an agency to a TSP for the movement of goods or people and/or transportation related services.

§ 102–118.20 Who is subject to this part?

All agencies and TSPs defined in § 102–118.35 are subject to this part. Your agency is required to incorporate this part into its internal regulations.

§ 102–118.25 Does GSA still require my agency to submit its overall transportation policies for approval?

GSA no longer requires your agency to submit its overall transportation policies for approval. However, as noted in § 102–118.325, agencies must submit their prepayment audit plans for approval. In addition, GSA may from time to time request to examine your agency's transportation policies to verify the correct performance of the prepayment audit of your agency's transportation bills.

§ 102–118.30 Are Government corporations bound by this part?

No, Government corporations are not bound by this part. However, they may choose to use it if they wish.

Federal Management Regulation

§ 102-118.35

DEFINITIONS

§ 102-118.35 What definitions apply to this part?

The following definitions apply to this part:

Agency means Executive agency, but does not include:

- (1) A Government Controlled Corporation;
- (2) The Tennessee Valley Authority;
- (3) The Virgin Islands Corporation;
- (4) The Atomic Energy Commission;
- (5) The Central Intelligence Agency;
- (6) The Panama Canal Commission; and
- (7) The National Security Agency, Department of Defense.

NOTE TO THE DEFINITION OF AGENCY: All agencies' payments for transportation services are subject to the transportation audit provisions of section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726).

Agency claim means any demand by an agency upon a TSP for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods, and documentary evidence of title. It is also a contract of carriage when movement is under 49 U.S.C. 10721 and 49 U.S.C. 13712.

Document reference number means the unique number on a bill of lading, Government Bill of Lading, Government Transportation Request, or transportation ticket, used to track the movement of shipments and individuals.

EDI signature means a discrete authentication code which serves in place of a paper signature and binds parties to the terms and conditions of a contract in electronic communication.

Electronic commerce means electronic techniques for performing business transactions (ordering, billing, and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Electronic data interchange means electronic techniques for carrying out transportation transactions using electronic transmissions of the informa-

tion between computers instead of paper documents. These electronic transmissions must use established and published formats and codes as authorized by the applicable Federal Information Processing Standards.

Electronic funds transfer means any transfer of funds, other than transactions initiated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearinghouse transfers, Fed Wire transfers, and transfers made at automatic teller machines and point of sale terminals.

Government Bill of Lading (GBL) means Optional Forms 1103 and 1203, the transportation documents issued by GSA and used as a receipt of goods, evidence of title, and generally a contract of carriage.

Government contractor-issued charge card means both an individually billed travel card, which the individual is required to pay, and a centrally billed account for paying travel expenses, which the agency is required to pay.

Government Transportation Request (GTR) means Optional Form 1169, the Government document used to buy transportation services. The document normally obligates the Government to pay for the transportation services provided.

Offset means agency use of money owed by the agency to a transportation service provider (TSP) to cover a previous debt incurred to the agency by the TSP.

Ordinary debt means an amount that a TSP owes an agency other than for the repayment of an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not provided (including unused transportation tickets), duplicate payments, and amounts for which a TSP is liable because of loss and/or damage to property it transported.

Overcharge means those charges for transportation and travel services that exceed those applicable under the contract for carriage. This also includes charges more than those applicable

under rates, fares and charges established pursuant to section 13712 and 10721 of the Revised Interstate Commerce Act, as amended (49 U.S.C. 13712 and 10721), or other equivalent contract, arrangement or exemption from regulation.

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders. This process may also include subsequent adjustments and collections actions taken against a TSP by the Government.

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders.

Privately Owned Personal Property Government Bill of Lading, Optional Form 1203, means the agency transportation document used as a receipt of goods, evidence of title, and generally a contract of carriage. It is only available for the transportation of household goods. Use of this form is mandatory for Department of Defense, but optional for other agencies.

Rate authority means the document that establishes the legal charges for a transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, and other equivalent documents.

Released value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. In return, when negotiating for rates and the released value is proposed to be less than the actual value of the cargo, the TSP should offer a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown on any applicable tariff, tender, contract,

transportation document or other documents covering the shipment.

Reparation means the payment involving a TSP to or from an agency of an improper transportation billing as determined by a postpayment audit. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from payments to settle a claim for loss and damage to items shipped under those rates.

Standard carrier alpha code (SCAC) means an unique four-letter code assigned to each TSP by the National Motor Freight Traffic Association, Inc.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when they determine that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP on the invoice, the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction.

Statement of difference rebuttal means a document used by the agency to respond to a TSP's claim about an improper reduction made against the TSP's original bill by the paying agency.

Supplemental bill means a bill for services that the TSP submits to the agency for additional payment after reimbursement for the original bill. The need to submit a supplemental bill may occur due to an incorrect first bill or due to charges which were not included on the original bill.

Taxpayer identification number (TIN) means the number required by the Internal Revenue Service to be used by the TSP in reporting income tax or other returns. For a TSP, the TIN is an employer identification number.

Transportation document (TD) means any executed agreement for transportation service, such as a bill of lading (including a Government Bill of Lading), a Government Transportation Request, or transportation ticket.

Transportation service means service involved in the physical movement

Federal Management Regulation

§ 102–118.45

(from one location to another) of products, people, household goods, and any other objects by a TSP for an agency as well as activities directly relating to or supporting that movement. Examples of this are storage, crating, or connecting appliances.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers, and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

Transportation service provider claim means any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which they now believe they are owed; and any subsequent bills from the TSP resulting from a transaction that was pre- or postpayment audited by the GSA Audit Division.

Virtual GBL (VGBL) means the use of a unique GBL number on a commercial document, which binds the TSP to the terms and conditions of a GBL.

NOTE TO §102–118.35: 49 U.S.C. 13102, *et seq.*, defines additional transportation terms not listed in this section.

Subpart B—Ordering and Paying for Transportation and Transportation Services

§ 102–118.40 How does my agency order transportation and transportation services?

Your agency orders:

(a) Transportation of freight and household goods and related transportation services (e.g., packing, storage) with a charge card, bill of lading, purchase order (or electronic equivalent), or for domestic shipments until March 31, 2002, a Government Bill of Lading (GBL). GBLs will continue to be available after that date, if needed, for international shipments (including domestic overseas shipments).

(b) Transportation of people through the purchase of transportation tickets with a Government issued charge card (or centrally billed travel account citation), Government issued individual travel charge card, personal charge card, cash (in accordance with Department of the Treasury regulations), or in limited prescribed situations, a Government Transportation Request (GTR). See the “U.S. Government Passenger Transportation—Handbook,” obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

[65 FR 24569, Apr. 26, 2000, as amended at 66 FR 48812, Sept. 24, 2001]

§ 102–118.45 How does a transportation service provider (TSP) bill my agency for transportation and transportation services?

The manner in which your agency orders transportation and transportation services determines the manner in which a TSP bills for service. This is shown in the following table:

TRANSPORTATION SERVICE PROVIDER BILLING

(a) Ordering method	(b) Billing method
(1)(i) Government issued agency charge card, (ii) Centrally billed travel account citation.	(1) Bill from charge card company (may be electronic).
(2)(i) Purchase order, ... (ii) Bill of lading, (iii) Government Bill of Lading,	(2) Bill from TSP (may be electronic).

TRANSPORTATION SERVICE PROVIDER BILLING—Continued

(a) Ordering method	(b) Billing method
(iv) Government Transportation Request.	
(3)(i) Contractor issued individual travel charge card. (ii) Personal charge card, (iii) Personal cash.	(3) Voucher from employee (may be electronic).

§ 102–118.50 How does my agency pay for transportation services?

Your agency may pay for transportation services in three ways:

(a) *Electronic funds transfer (EFT)* (31 U.S.C. 3332, *et seq.*). Your agency is required by statute to make all payments by EFT unless your agency receives a waiver from the Department of the Treasury.

(b) *Check*. For those situations where EFT is not possible and the Department of the Treasury has issued a waiver, your agency may make payments by check.

(c) *Cash*. In very unusual circumstances and as a last option, your agency payments may be made in cash in accordance with Department of the Treasury regulations (31 CFR part 208).

§ 102–118.55 What administrative procedures must my agency establish for payment of freight, household goods, or other transportation services?

Your agency must establish administrative procedures which assure that the following conditions are met:

(a) The negotiated price is fair and reasonable;

(b) A document of agreement signifying acceptance of the arrangements with terms and conditions is filed with the participating agency by the TSP;

(c) The terms and conditions are included in all transportation agreements and referenced on all transportation documents (TDs);

(d) Bills are only paid to the TSP providing service under the bill of lading to your agency and may not be waived;

(e) All fees paid are accounted for in the aggregate delivery costs;

(f) All payments are subject to applicable statutory limitations;

(g) Procedures (such as an unique numbering system) are established to prevent and detect duplicate payments, properly account for expenditures and discrepancy notices;

(h) All transactions are verified with any indebtedness list. On charge card transactions, your agency must consult any indebtedness list if the charge card contract provisions allow for it; and

(i) Procedures are established to process any unused tickets.

§ 102–118.60 To what extent must my agency use electronic commerce?

Your agency should use electronic commerce (*i.e.*, electronic methods for ordering, receiving bills, and paying for transportation and transportation services) to the maximum extent possible.

§ 102–118.65 Can my agency receive electronic billing for payment of transportation services?

Yes, when mutually agreeable to the agency and the GSA Audit Division, your agency is encouraged to use electronic billing for the procurement and billing of transportation services.

§ 102–118.70 Must my agency make all payments via electronic funds transfer?

Yes, under 31 U.S.C. 3332, *et seq.*, your agency must make all payments for goods and services via EFT (this includes goods and services ordered using charge cards).

Federal Management Regulation

§ 102-118.95

§ 102-118.75 What if my agency or the TSP does not have an account with a financial institution or approved payment agent?

Under 31 U.S.C. 3332, *et seq.*, your agency must obtain an account with a financial institution or approved payment agent in order to meet the statutory requirements to make all Federal payments via EFT unless your agency receives a waiver from the Department of the Treasury. To obtain a waiver, your agency must contact:

The Commissioner
Financial Management Service
Department of the Treasury
401 Fourteenth Street, SW.
Washington, DC 20227
<http://www.fms.treas.gov/>

§ 102-118.80 Who is responsible for keeping my agency's electronic commerce transportation billing records?

Your agency's internal financial regulations will identify responsibility for recordkeeping. In addition, the GSA Audit Division keeps a central repository of electronic transportation billing records for legal and auditing purposes. Therefore, your agency must forward all relevant electronic transportation billing documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.85 Can my agency use a Government contractor issued charge card to pay for transportation services?

Yes, your agency may use a Government contractor issued charge card to purchase transportation services if permitted under the charge card contract or task order. In these circumstances your agency will receive a bill for these services from the charge card company.

§ 102-118.90 If my agency orders transportation and/or transportation services with a Government contractor issued charge card or charge account citation, is this subject to prepayment audit?

Generally, no transportation or transportation services ordered with a

Government contractor issued charge card or charge account citation can be prepayment audited because the bank or charge card contractor pays the TSP directly, before your agency receives a bill that can be audited from the charge card company. However, if your agency contracts with the charge card or charge account provider to provide for a prepayment audit, then, as long as your agency is not liable for paying the bank for improper charges (as determined by the prepayment audit verification process), a prepayment audit can be used. As with all prepayment audit programs, the charge card prepayment audit must be approved by the GSA Audit Division prior to implementation. If the charge card contract does not provide for a prepayment audit, your agency must submit the transportation line items on the charge card to the GSA Audit Division for a postpayment audit.

§ 102-118.95 What forms can my agency use to pay transportation bills?

Your agency must use commercial payment practices and forms to the maximum extent possible; however, when viewed necessary by your agency, your agency may use the following Government forms to pay transportation bills:

(a) Standard Form (SF) 1113, Public Voucher for Transportation Charges, and SF 1113-A, Memorandum Copy;

(b) Optional Form (OF) 1103, Government Bill of Lading and OF 1103A Memorandum Copy (used for movement of things, both privately owned and Government property for official uses);

(c) OF 1169, Government Transportation Request (used to pay for tickets to move people); and

(d) OF 1203, Privately Owned Personal Property Government Bill of Lading, and OF 1203A, Memorandum Copy (used by the Department of Defense to move private property for official transfers).

NOTE TO § 102-118.95: By March 31, 2002, your agency may no longer use the GBLs (OF 1103 and OF 1203) for domestic shipments. After September 30, 2000, your agency should minimize the use of GTRs (OF 1169).

[65 FR 24569, Apr. 26, 2000, as amended at 66 FR 48812, Sept. 24, 2001]

§ 102-118.100 What must my agency ensure is on each SF 1113?

Your agency must ensure during its prepayment audit of a TSP bill that the TSP filled out the Public Vouchers, SF 1113, completely including the taxpayer identification number (TIN), and standard carrier alpha code (SCAC). An SF 1113 must accompany all billings.

§ 102-118.105 Where can I find the rules governing the use of a Government Bill of Lading?

The “U.S. Government Freight Transportation—Handbook” contains information on how to prepare this GBL form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.110 Where can I find the rules governing the use of a Government Transportation Request?

The “U.S. Government Passenger Transportation—Handbook” contains information on how to prepare this GTR form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.115 Must my agency use a GBL?

No, your agency is not required to use a GBL and must use commercial payment practices to the maximum extent possible. Effective March 31, 2002, your agency must phase out the use of the Optional Forms 1103 and 1203 for domestic shipments. After this date, your agency may use the GBL solely for international shipments.

[65 FR 24569, Apr. 26, 2000, as amended at 66 FR 48812, Sept. 24, 2001]

§ 102-118.120 Must my agency use a GTR?

No, your agency is not required to use a GTR. Your agency must adopt commercial practices and eliminate

GTR use to the maximum extent possible.

§ 102-118.125 What if my agency uses a TD other than a GBL?

If your agency uses any other TD for shipping under its account, the requisite and the named safeguards must be in place (i.e., terms and conditions found herein and in the “U.S. Government Freight Transportation—Handbook,” appropriate numbering, etc.).

§ 102-118.130 Must my agency use a GBL for express, courier, or small package shipments?

No, however, in using commercial forms all shipments must be subject to the terms and conditions set forth for use of a bill of lading for the Government. Any other non-conflicting applicable contracts or agreements between the TSP and an agency involving buying transportation services for Government traffic remain binding. This purchase does not require a SF 1113. When you are using GSA’s schedule for small package express delivery, the terms and conditions of that contract are binding.

102-118.135 Where are the mandatory terms and conditions governing the use of bills of lading?

The mandatory terms and conditions governing the use of bills of lading are contained in this part and the “U.S. Government Freight Transportation Handbook.”

102-118.140 What are the major mandatory terms and conditions governing the use of GBLs and bills of lading?

The mandatory terms and conditions governing the use of GBLs and bills of lading are:

- (a) Unless otherwise permitted by statute, the TSP must not demand prepayment or collect charges from the consignee. The TSP, providing service under the bill of lading, must present the original, properly certified GBL or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges, to the paying office for payment;
- (b) The shipment must be made at the restricted or limited valuation specified in the tariff or classification

or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the GBL or bill of lading. (This is commonly referred to as an alternation of rates);

(c) Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the nearest office of the last delivering TSP and extend to the TSP the privilege of examining the shipment;

(d) The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered to valid;

(e) Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 31 U.S.C. 3717); and

(f) Additional mandatory terms and conditions are in this part and the "U.S. Government Freight Transportation—Handbook."

102-118.145 Where are the mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are contained in this part and the "U.S. Government Passenger Transportation—Handbook."

102-118.150 What are the major mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are:

(a) Government travel must be via the lowest cost available, that meets travel requirements; e.g., Government contract, fare, through, excursion, or reduced one way or round trip fare. This should be done by entering the term "lowest coach" on the Government travel document if the specific fare basis is not known;

(b) The U.S. Government is not responsible for charges exceeding those applicable to the type, class, or character authorized in transportation documents;

(c) The U.S. Government contractor-issued charge card must be used to the maximum extent possible to procure passenger transportation tickets. GTRs must be used minimally;

(d) Government passenger transportation documents must be in accordance with Federal Travel Regulation Chapters 300 and 301 (41 CFR chapters 300 and 301), and the "U.S. Government Passenger Transportation—Handbook";

(e) Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982;

(f) The TSP must insert on the TD any known dates on which travel commenced;

(g) The issuing official or traveler, by signature, certifies that the requested transportation is for official business;

(h) The TSP must not honor any request containing erasures or alterations unless the TD contains the authentic, valid initials of the issuing official; and

(i) Additional mandatory terms and conditions are in this part and the "U.S. Government Passenger Transportation—Handbook."

§ 102-118.155 How does my agency handle supplemental billings from the TSP after payment of the original bill?

Your agency must process, review, and verify supplemental billings using the same procedures as on an original billing. If the TSP disputes the findings, your agency must attempt to resolve the disputed amount.

§ 102-118.160 Who is liable if my agency makes an overpayment on a transportation bill?

If the agency conducts prepayment audits of its transportation bills, agency transportation certifying and disbursing officers are liable for any overpayments made. If GSA has granted a waiver to the prepayment audit requirement and the agency performs a postpayment audit (31 U.S.C. 3528 and 31 U.S.C. 3322) neither the certifying nor disbursing officers are liable for the reasons listed in these two cited statutes.

§ 102-118.165 What must my agency do if it finds an error on a TSP bill?

Your agency must advise the TSP via statement of difference of any adjustment that you make either electronically or in writing within 7 days of receipt of the bill, as required by the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). This notice must include the TSP's taxpayer identification number, standard carrier alpha code, bill number and document reference number, agency name, amount requested by the TSP, amount paid, payment voucher number, complete tender or tariff authority, the applicable rate authority and the complete fiscal authority including the appropriation.

§ 102-118.170 Will GSA continue to maintain a centralized numbering system for Government transportation documents?

Yes, GSA will maintain a numbering system for GBLs and GTRs. For commercial TDs, each agency must create a unique numbering system to account for and prevent duplicate numbers. The GSA Audit Division must approve this system. Write to:

General Services Administration
Federal supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

Subpart C—Use of Government Billing Documents

TERMS AND CONDITIONS GOVERNING ACCEPTANCE AND USE OF A GOVERNMENT BILL OF LADING (GBL) OR GOVERNMENT TRANSPORTATION REQUEST (GTR) (UNTIL FORM RETIREMENT)

§ 102-118.175 Must my agency prepare for the GBL retirement?

Yes, your agency must prepare for the GBL retirement. Effective March 31, 2002, your agency must phase out the use of the SF 1103, Government Bill of Lading, GBL, and SF 1203, Privately Owned Personal Property Government Bill of Lading (PPGBLs), for domestic shipments. After March 31, 2002, your agency may use the GBL or PPGBL solely for international shipments (including domestic overseas shipments).

[65 FR 24569, Apr. 26, 2000, as amended at 66 FR 48812, Sept. 24, 2001]

§ 102-118.180 Must my agency prepare for the GTR retirement?

Yes, your agency must use the GTR only in situations that do not lend themselves to the use of commercial payment methods.

§ 102-118.185 When buying freight transportation, must my agency reference the applicable contract or tender on the bill of lading (including a GBL)?

Yes, your agency must reference the applicable contract or tender when buying transportation on a bill of lading (including GBLs). However, the referenced information on a GBL or bill of lading does not limit an audit of charges.

§ 102-118.190 When buying passenger transportation must my agency reference the applicable contract?

Yes, when buying passenger transportation, your agency must reference the applicable contract on a GTR or passenger transportation document (e.g., ticket).

Federal Management Regulation

§ 102-118.240

§ 102-118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?

For shipments bought on a TD, the TSP must submit an original properly certified GBL, PPGBL, or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges. The TSP must submit this package and all supporting documents to the agency paying office.

§ 102-118.200 Can a TSP demand advance payment for the transportation charges submitted on a bill of lading (including GBL)?

No, a TSP cannot demand advance payment for transportation charges submitted on a bill of lading (including GBL), unless authorized by law.

§ 102-118.205 May my agency pay an agent functioning as a warehouseman for the TSP providing service under the bill of lading?

No, your agency may only pay the TSP with whom it has a contract. The bill of lading will list the TSP with whom the Government has a contract.

§ 102-118.210 May my agency use bills of lading other than the GBL for a transportation shipment?

Yes, as long as the mandatory terms and conditions contained in this part (as also stated on a GBL) apply. The TSP must agree in writing to the mandatory terms and conditions (also found in the "U.S. Government Freight Transportation Handbook") contained in this part.

§ 102-118.215 May my agency pay a TSP any extra fees to pay for the preparation and use of the GBL or GTR?

No, your agency must not pay any additional charges for the preparation and use of the GBL or GTR. Your agency may not pay a TSP a higher rate than comparable under commercial procedures for transportation bought on a GBL or GTR.

§ 102-118.220 If a transportation debt is owed to my agency by a TSP because of loss or damage to property, does my agency report it to GSA?

No, if your agency has administratively determined that a TSP owes a debt resulting from loss or damage, follow your agency regulations.

§ 102-118.225 What constitutes final receipt of shipment?

Final receipt of the shipment occurs when the consignee or a TSP acting on behalf of the consignee with the agency's permission, fully signs and dates both the delivering TSP's documents and the consignee's copy of the same documents indicating delivery and/or explaining any delay, loss, damage, or shrinkage of shipment.

§ 102-118.230 What if my agency creates or eliminates a field office approved to prepare transportation documents?

Your agency must tell the GSA Audit Division whenever it approves a new or existing agency field office to prepare transportation documents or when an agency field office is no longer authorized to do so. This notice must show the name, field office location of the bureau or office, and the date on which your agency granted or canceled its authority to schedule payments for transportation service.

AGENCY RESPONSIBILITIES WHEN USING GOVERNMENT BILLS OF LADING (GBLS) OR GOVERNMENT TRANSPORTATION REQUESTS (GTRs)

§ 102-118.235 Must my agency keep physical control and accountability of the GBL and GTR forms or GBL and GTR numbers?

Yes, your agency is responsible for the physical control and accountability of the GBL and GTR stock and must have procedures in place and available for inspection by GSA. Your agency must consider these Government transportation documents to be the same as money.

§ 102-118.240 How does my agency get GBL and GTR forms?

Your agency can get GBL and GTR forms, in either blank or prenumbered formats, from:

§ 102-118.245

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM-WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102-118.245 How does my agency get an assigned set of GBL or GTR numbers?

If your agency does not use prenumbered GBL and GTR forms, you may get an assigned set of numbers from:

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM-WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102-118.250 Who is accountable for the issuance and use of GBL and GTR forms?

Agencies and employees are responsible for the issuance and use of GBL and GTR forms and are accountable for their disposition.

§ 102-118.255 Are GBL and GTR forms numbered and used sequentially?

Yes, GBL and GTR forms are always sequentially numbered when printed and/or used. No other numbering of the forms, including additions or changes to the prefixes or additions of suffixes, is permitted.

QUOTATIONS, TENDERS OR CONTRACTS

§ 102-118.260 Must my agency send all quotations, tenders, or contracts with a TSP to GSA?

(a) Yes, your agency must send two copies of each quotation, tender, or contract of special rates, fares, charges, or concessions with TSPs including those authorized by 49 U.S.C. 10721 and 13712, upon execution to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

(b) When this information is in an electronic format approved by the GSA Audit Division, your agency will transfer the information electronically.

41 CFR Ch. 102 (7-1-02 Edition)

Subpart D—Prepayment Audits of Transportation Services

AGENCY REQUIREMENTS FOR PREPAYMENT AUDITS

§ 102-118.265 What is a prepayment audit?

A prepayment audit is a review of a transportation service provider (TSP) bill that occurs prior to your agency making payment to a TSP. This review compares the charges on the bill against the charge permitted under the contract, rate tender, or other agreement under which the TSP provided the transportation and/or transportation related services.

§ 102-118.270 Must my agency establish a prepayment audit program?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a prepayment audit program. Your agency must send a preliminary copy of your prepayment audit program to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
<http://policyworks.gov/org/main/MT>

(b) The final plan must be approved and in place by April 20, 2000.

§ 102-118.275 What must my agency consider when designing and implementing a prepayment audit program?

As shown in § 102-118.45, the manner in which your agency orders transportation services determines how and by whom the bill for those services will be presented. Your agency's prepayment audit program must consider all of the methods that you use to order and pay for transportation services. With each method of ordering transportation services, your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated. Each method of ordering transportation and transportation services may require a different kind of prepayment audit.

Federal Management Regulation

§ 102-118.315

§ 102-118.280 What advantages does the prepayment audit offer my agency?

Prepayment auditing will allow your agency to detect and eliminate billing errors before payment and will eliminate the time and cost of recovering agency overpayments.

§ 102-118.285 What options for performing a prepayment audit does my agency have?

Your agency may perform a prepayment audit by:

- (a) Creating an internal prepayment audit program;
- (b) Contracting directly with a prepayment audit service provider; or
- (c) Using the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services.

NOTE TO § 102-118.285: Either of the choices in paragraph (a), (b) or (c) of this section might include contracts with charge card companies that provide prepayment audit services.

§ 102-118.290 Must every electronic and paper transportation bill undergo a prepayment audit?

Yes, all transportation bills and payments must undergo a prepayment audit unless your agency's prepayment audit program uses a statistical sampling technique of the bills or the Administrator of General Services grants a specific waiver from the prepayment audit requirement. If your agency chooses to use statistical sampling, all bills must be at or below the Comptroller General specified limit of \$2,500.00 (31 U.S.C. 3521(b) and General Accounting Office Policy and Procedures Manual Chapter 7, obtainable from:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015
<http://www.gao.gov>

§ 102-118.295 What are the limited exceptions to every bill undergoing a prepayment audit?

The limited exceptions to bills undergoing a prepayment audit are those bills subject to a waiver from GSA (which may include bills determined to be below your agency's threshold). The

waiver to prepayment audit requirements may be for bills, mode or modes of transportation or for an agency or subagency.

§ 102-118.300 How does my agency fund its prepayment audit program?

Your agency must pay for the prepayment audit from those funds appropriated for transportation services.

§ 102-118.305 Must my agency notify the TSP of any adjustment to the TSP's bill?

Yes, your agency must notify the TSP of any adjustment to the TSP's bill either electronically or in writing within 7 days of receipt of the bill. This notice must refer to the TSP's bill number, agency name, taxpayer identification number, standard carrier alpha code, document reference number, amount billed, amount paid, payment voucher number, complete tender or tariff authority, including item or section number.

§ 102-118.310 Must my agency prepayment audit program establish appeal procedures whereby a TSP may appeal any reduction in the amount billed?

Yes, your agency must establish an appeal process that directs TSP appeals to an agency official who is able to provide adequate consideration and review of the circumstances of the claim. Your agency must complete the review of the appeal within 30 days.

§ 102-118.315 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency should forward all relevant documents including a complete billing history, and the appropriation or fund charged, to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

(b) The GSA Audit Division will review the appeal of an agency's final, full or partial denial of a claim and

§ 102-118.320

issue a decision. A TSP must submit claims within 3 years under the guidelines established in § 102-118.460.

§ 102-118.320 What information must be on transportation bills that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation bills that have completed a prepayment audit:

- (1) The date received from a TSP;
- (2) A TSP's bill number;
- (3) Your agency name;
- (4) A Document Reference Number (DRN);
- (5) The amount billed;
- (6) The amount paid;
- (7) The payment voucher number;
- (8) Complete tender or tariff authority, including item or section number;
- (9) The TSP's taxpayer identification number (TIN);
- (10) The TSP's standard carrier alpha code (SCAC);
- (11) The auditor's authorization code or initials; and
- (12) A copy of any statement of difference sent to the TSP.

(b) Your agency can find added guidance in the "U.S. Government Freight Transportation—Handbook," obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

MAINTAINING AN APPROVED PROGRAM

§ 102-118.325 Must I get approval for my agency's prepayment audit program?

Yes, your agency must get approval for your prepayment audit program. The highest level budget or financial official of each agency, such as the Chief Financial Officer, initially approves your agency's prepayment audit program. After internal agency approval, your agency submits the plan in writing to the GSA Audit Division for final approval.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-118.330 What are the elements of an acceptable prepayment audit program?

An acceptable prepayment audit program must:

- (a) Verify all transportation bills against filed rates and charges before payment;
- (b) Comply with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);
- (c) Allow for your agency to establish minimum dollar thresholds for transportation bills subject to audit;
- (d) Require your agency's paying office to offset debts from amounts owed to the TSP within the 3 years as per 31 U.S.C. 3726(b);
- (e) Be approved by the GSA Audit Division. After the initial approval, the agency may be subject to periodic program review and reapproval;
- (f) Complete accurate audits of transportation bills and notify the TSP of any adjustment within 7 calendar days of receipt;
- (g) Create accurate notices to the TSPs that describe in detail the reasons for any full or partial rejection of the stated charges on the invoice. An accurate notice must include the TSP's invoice number, the billed amount, TIN, standard carrier alpha code, the charges calculated by the agency, and the specific reasons including applicable rate authority for the rejection;
- (h) Forward documentation monthly to the GSA Audit Division, which will store paid transportation bills under the General Records Schedule 9, Travel and Transportation (36 CFR Chapter XII, 1228.22) which requires keeping records for 3 years. GSA will arrange for storage of any document requiring special handling (*e.g.*, bankruptcy, court case, *etc.*). These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;
- (i) Establish procedures in which transportation bills not subject to prepayment audit (*i.e.*, bills for unused tickets and charge card billings) are handled separately and forwarded to the GSA Audit Division; and
- (j) Implement a unique agency numbering system to handle commercial paper and practices (see § 102-118.55).

Federal Management Regulation

§ 102-118.380

§ 102-118.335 What does the GSA Audit Division consider when verifying an agency prepayment audit program?

The GSA Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102-118.340 How does my agency contact the GSA Audit Division?

Your agency may contact the GSA Audit Division by writing to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.345 If my agency chooses to change an approved prepayment audit program, does the program need to be reapproved?

Yes, you must receive approval of any changes in your agency's prepayment audit program from the GSA Audit Division.

LIABILITY FOR CERTIFYING AND DISBURSING OFFICERS

§ 102-118.350 Does establishing a prepayment audit system or program change the responsibilities of the certifying officers?

Yes, in a prepayment audit environment, an official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102-118.355 Does a prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a GBL or passenger transportation request when the Administrator of General Services or designee waives the prepay-

ment audit requirement and your agency uses postpayment audits.

§ 102-118.360 What relief from liability is available for the certifying official under a postpayment audit?

The agency counsel relieves a certifying official from liability for overpayments in cases where postpayment is the approved method of auditing and:

(a) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(b) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102-118.365 Do the requirements of a prepayment audit change the disbursing official's liability for overpayment?

Yes, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102-118.370 Where does relief from prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

WAIVERS FROM MANDATORY PREPAYMENT AUDIT

§ 102-118.375 Who has the authority to grant a waiver of the prepayment audit requirement?

Only the Administrator of General Services or designee has the authority to grant waivers from the prepayment audit requirement.

§ 102-118.380 How does my agency apply for a waiver from a prepayment audit of requirement?

Your agency must submit a request for a waiver from the requirement to perform a prepayment in writing to:

General Services Administration
Office of Transportation and Personal Property (MT)

§ 102-118.385

1800 F Street, NW.
Washington, DC 20405
<http://policyworks.gov/org/main/MT>

§ 102-118.385 What must a waiver request include?

A waiver request must explain in detail how the use of a prepayment audit increases costs over a postpayment audit, decreases efficiency, involves a relevant public interest, adversely affects the agency's mission, or is not feasible for the agency. A waiver request must identify the mode or modes of transportation, agency or subagency to which the waiver would apply.

§ 102-118.390 On what basis does GSA grant a waiver to the prepayment audit requirement?

GSA issues waivers to the prepayment audit requirement based on:

- (a) Cost-effectiveness;
- (b) Government efficiency;
- (c) Public interest; or
- (d) Other factors the Administrator of General Services considers appropriate.

§ 102-118.395 How long will GSA take to respond to a waiver request?

GSA will respond to a written waiver request within 30 days from the receipt of the request.

§ 102-118.400 Must my agency renew a waiver of the prepayment audit requirements?

Yes, your agency waiver to the prepayment audit requirement will not exceed 2 years. Your agency must reapply to ensure the circumstances at the time of approval still apply.

§ 102-118.405 Are my agency's prepayment audited transportation bills subject to periodic postpayment audit oversight from the GSA Audit Division?

Yes, two years or more after starting prepayment audits, the GSA Audit Division (depending on its evaluation of the results) may subject your agency's prepayment audited transportation bills to periodic postpayment audit oversight rather than blanket postpayment audits. The GSA Audit Division will then prepare a report analyzing the success of your agency's prepayment audit program. This report

41 CFR Ch. 102 (7-1-02 Edition)

will be on file at GSA and available for your review.

SUSPENSION OF AGENCY PREPAYMENT AUDIT PROGRAMS

§ 102-118.410 Can GSA suspend my agency's prepayment audit program?

(a) Yes, the Director of the GSA Audit Division may suspend your agency's prepayment audit program based on his or her determination of a systematic or frequent failure of the program to:

(1) Conduct an accurate prepayment audit of your agency's transportation bills;

(2) Abide by the terms of the Prompt Payment Act;

(3) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 days of receipt;

(4) Follow Comptroller General decisions, GSA Board of Contract Appeals decisions, the Federal Management Regulation and GSA instructions or precedents about substantive and procedure matters; and/or

(5) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

(b) A systematic or a multitude of individual failures will result in suspension. A suspension of an agency's prepayment audit program may be in whole or in part for failure to conduct proper prepayment audits.

Subpart E—Postpayment Transportation Audits

§ 102-118.415 Will the widespread mandatory use of prepayment audits eliminate postpayment audits?

No, the mandatory use of prepayment audits will not eliminate postpayment audits because:

(a) Postpayment audits will continue for those areas which do not lend themselves to the prepayment audit; and

(b) The GSA Audit Division will continue to review and survey the progress of the prepayment audit by performing a postpayment audit on the bills. The GSA Audit Division has a Congressionally mandated responsibility under 31

Federal Management Regulation

§ 102-118.440

U.S.C. 3726 to perform oversight on transportation bill payments. During the early startup period for prepayment audits, transportation bills are subject to a possible postpayment audit to discover the effectiveness of the prepayment audit process.

§ 102-118.420 Can the Administrator of General Services waive the postpayment auditing provisions of this subpart?

Yes, in certain circumstances, the Administrator of General Services or designee may waive the postpayment audit oversight requirements of this subpart on a case by case basis.

§ 102-118.425 Is my agency allowed to perform a postpayment audit on our transportation bills?

No, your agency must forward all transportation bills to GSA for a postpayment audit regardless of any waiver allowing for postpayment audit.

§ 102-118.430 What information must be on my agency's transportation bills submitted for a postpayment audit?

Your agency must annotate all of its transportation bills submitted for postpayment audit with:

- (a) The date received from a TSP;
- (b) A TSP's bill number;
- (c) Your agency name;
- (d) A Document Reference Number;
- (e) The amount requested;
- (f) The amount paid;
- (g) The payment voucher number;
- (h) Complete tender or tariff authority, including contract price (if purchased under the Federal Acquisition Regulation), item or section number;
- (i) The TSP's taxpayer identification number; and
- (j) The TSP's standard carrier alpha code (SCAC).

§ 102-118.435 What procedures does GSA use to perform a postpayment audit?

When GSA performs a postpayment audit, the GSA Audit Division has the delegated authority to implement the following procedures:

- (a) Audit selected TSP bills after payment;
- (b) Audit selected TSP bills before payment as needed to protect the Gov-

ernment's interest (i.e., bankruptcy, fraud);

(c) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of agencies;

(d) Adjudicate and settle transportation claims by and against agencies;

(e) Offset an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issue a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid, the basis for the proper charge for the document reference number, and cites applicable tariff or tender along with other data relied on to support the overcharge. A separate Notice of Overcharge is prepared and mailed for each bill; and

(g) Issue a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102-118.440 What are the postpayment audit responsibilities and roles of the GSA Audit Division?

When the GSA Audit Division performs a postpayment audit for your agency, GSA will:

(a) Examine and analyze payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements or tenders and make adjustments to protect the interest of an agency;

(b) Examine, adjudicate, and settle transportation claims by and against the agency;

(c) Collect from TSPs by refund, setoff, offset or other means, the amounts determined to be due the agency;

(d) Adjust, terminate or suspend debts due on TSP overcharges;

(e) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or

§ 102-118.445

against an agency and provide technical, fiscal, and factual data from relevant records;

(f) Provide transportation specialists and lawyers to serve as expert witnesses, assist in pretrial conferences, draft pleadings, orders, and briefs, and participate as requested in connection with transportation suits by or against an agency;

(g) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(h) Furnish information on rates, fares, routes, and related technical data upon request;

(i) Tell an agency of irregular shipping routing practices, inadequate commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(j) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters and acquainting them with agency requirements.

§ 102-118.445 Must my agency pay for a postpayment audit when using the GSA Audit Division?

No, the expenses of postpayment audit contract administration and

41 CFR Ch. 102 (7-1-02 Edition)

audit-related functions are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds.

Subpart F—Claims and Appeal Procedures

GENERAL AGENCY INFORMATION FOR ALL CLAIMS

§ 102-118.450 Can a TSP file a transportation claim against my agency?

Yes, a TSP may file a transportation claim against your agency under 31 U.S.C. 3726 for:

(a) Amounts owed but not included in the original billing;

(b) Amounts deducted or set off by an agency that are disputed by the TSP;

(c) Requests by a TSP for amounts previously refunded in error by that TSP; and/or

(d) Unpaid original bills requiring direct settlement by GSA, including those subject to doubt about the suitability of payment (mainly bankruptcy or fraud).

§ 102-118.455 What is the time limit for a TSP to file a transportation claim against my agency?

The time limits on a TSP transportation claim against the Government differ by mode as shown in the following table:

TIME LIMITS ON ACTIONS TAKEN BY TSP

Mode	Freight charges	Statute
(a) Air Domestic	6 years	28 U.S.C. 2401, 2501.
(b) Air International	6 years	28 U.S.C. 2401, 2501.
(c) Freight Forwarders (subject to the IC Act).	3 years	49 U.S.C. 14705(f).
(d) Motor	3 years	49 U.S.C. 14705(f).
(e) Rail	3 years	49 U.S.C. 14705(f).
(f) Water (subject to the IC Act)	3 years	49 U.S.C. 14705(f).

Federal Management Regulation

§ 102-118.460

TIME LIMITS ON ACTIONS TAKEN BY TSP—Continued

Mode	Freight charges	Statute
(g) Water (not subject to the IC Act).	2 years	46 U.S.C. 745.
(h) TSPs exempt from regulation.	6 years	28 U.S.C. 2401, 2501.

§ 102-118.460 What is the time limit for my agency to file a court claim with a TSP for freight charges, reparations, and loss or damage to the property?

and may involve freight charges. The following tables list the time limits:

Statutory time limits vary depending on the mode and the service involved

(A) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPs

Mode	Freight charges	Reparations	Loss and damage
(1) Rail	3 years 49 U.S.C. 11705 ..	3 years 49 U.S.C. 11705 ..	6 years. 28 U.S.C. 2415.
(2) Motor	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(3) Freight Forwarders subject to the IC Act.	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(4) Water (subject to the IC Act).	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(5) Water (not subject to the IC Act).	6 years 28 U.S.C. 2415.	2 years 46 U.S.C. 821.	1 year. 46 U.S.C. 1303(6) (if subject to Carriage of Goods by Sear Act, 46 U.S.C. 1300-1315).
(6) Domestic Air	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.
(7) International Air	6 years 28 U.S.C. 2415		2 years. 49 U.S.C. 40105.

(B) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPs EXEMPT FROM REGULATION

Mode	Freight	Reparations	Loss and damage
(1) All	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.

§ 102-118.465 Must my agency pay interest on a disputed amount claimed by a TSP?

No, interest penalties under the Prompt Payment Act, (31 U.S.C. 3901, *et seq.*), are not required when payment is delayed because of a dispute between an agency and a TSP.

§ 102-118.470 Are there statutory time limits for a TSP on filing an administrative claim with the GSA Audit Division?

Yes, an administrative claim must be received by the GSA Audit Division or its designee (the agency where the claim arose) within 3 years beginning the day after the latest of the following dates (except in time of war):

- (a) Accrual of the cause of action;
- (b) Payment of charges for the transportation involved;
- (c) Subsequent refund for overpayment of those charges; or
- (d) Deductions made to a TSP claim by the Government under 31 U.S.C. 3726.

§ 102-118.475 Does interest apply after certification of payment of claims?

Yes, interest under the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) begins 30 days after certification for payment by GSA.

§ 102-118.480 How does my agency settle disputes with a TSP?

As a part of the prepayment audit program, your agency must have a plan to resolve disputes with a TSP. This program must allow a TSP to appeal payment decisions made by your agency.

§ 102-118.485 Is there a time limit for my agency to issue a decision on disputed claims?

Yes, your agency must issue a ruling on a disputed claim within 30 days of receipt of the claim.

§ 102-118.490 What if my agency fails to settle a dispute within 30 days?

(a) If your agency fails to settle a dispute within 30 days, the TSP may appeal to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC 1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

(b) If the TSP disagrees with the administrative settlement by the Audit Division, the TSP may appeal to the General Services Board of Contract Appeals.

§ 102-118.495 May my agency appeal a decision by the General Services Board of Contract Appeals (GSBCA)?

No, your agency may not appeal a decision made by the GSBCA.

§ 102-118.500 How does my agency handle a voluntary refund submitted by a TSP?

(a) An agency must report all voluntary refunds to the GSA Audit Division (so that no Notice of Overcharge or financial offset occurs), unless other arrangements are made (*e.g.*, charge card refunds, etc.). These reports must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

Federal Management Regulation

§ 102-118.545

(b) Once a Notice of Overcharge is issued by the GSA Audit Division, then any refund is no longer considered voluntary and the agency must forward the refund to the GSA Audit Division.

§ 102-118.505 Must my agency send a voluntary refund to the Treasurer of the United States?

No, your agency may keep and use voluntary refunds submitted by a TSP, if the refund was made prior to a Notice of Overcharge issued by the GSA Audit Division.

§ 102-118.510 Can my agency revise or alter a GSA Form 7931, Certificate of Settlement?

Generally, no, an agency must not revise or alter amounts on a GSA Form 7931. The only change an agency can make to a GSA Form 7931 is to change the agency financial data to a correct cite. Any GSA Form 7931 that cannot be paid (*e.g.*, an amount previously paid), must be immediately returned to the GSA Audit Division with an explanation.

§ 102-118.515 Does my agency have any recourse not to pay a Certificate of Settlement?

No, a Certificate of Settlement is the final administrative action.

§ 102-118.520 Who is responsible for determining the standards for collection, compromise, termination, or suspension of collection action on any outstanding debts to my agency?

Under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), the Comptroller General and the Attorney General have joint responsibility for issuing standards for your agency.

§ 102-118.525 What are my agency's responsibilities for verifying the correct amount of transportation charges?

Your agency's employees are responsible for diligently verifying the correct amount of transportation charges prior to payment (31 U.S.C. 3527).

§ 102-118.530 Will GSA instruct my agency's disbursing offices to offset unpaid TSP billings?

Yes, GSA will instruct one or more of your agency's disbursing offices to deduct the amount due from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debts (31 U.S.C. 3716).

§ 102-118.535 Are there principles governing my agency's TSP debt collection procedures?

Yes, the principles governing your agency collection procedures for reporting debts to the General Accounting Office (GAO) or the Department of Justice are found in 4 CFR parts 101 through 105 and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies. The manual may be obtained by writing:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
<http://www.access.gpo.gov/>

§ 102-118.540 Who has the authority to audit, settle accounts, and/or start collection action for all transportation services provided for my agency?

The Director of the GSA Audit Division has the authority and responsibility to audit and settle all transportation related accounts (31 U.S.C. 3726). The reason for this is that he or she has access to Governmentwide data on a TSP's payments and billings with the Government. Your agency has the responsibility to correctly pay individual transportation claims.

TRANSPORTATION SERVICE PROVIDER (TSP) FILING REQUIREMENTS

§ 102-118.545 What information must a TSP claim include?

Transportation service provider (TSP) claims received by GSA or its designee must include one of the following:

(a) The signature of an individual or party legally entitled to receive payment for services on behalf of the TSP;

§ 102-118.550

(b) The signature of the TSP's agent or attorney accompanied by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the TSP; or

(c) An electronic signature, when mutually agreed upon.

§ 102-118.550 How does a TSP file an administrative claim using EDI or other electronic means?

The medium and precise format of data for an administrative claim filed electronically must be approved in advance by the GSA Audit Division. GSA will use an authenticating EDI signature to certify receipt of the claim. The data on the claim must contain proof of the delivery of goods, and an itemized bill reflecting the services provided, with the lowest charges available for service. The TSP must be able to locate, identify, and reproduce the records in readable form without loss of clarity.

§ 102-118.555 Can a TSP file a supplemental administrative claim?

Yes, a TSP may file a supplemental administrative claim. Each supplemental claim must cover charges relating to one paid transportation document.

§ 102-118.560 What is the required format that a TSP must use to file an administrative claim?

A TSP must bill for charges claimed on a SF 1113, Public Voucher for Transportation Charges, in the manner prescribed in the "U.S. Government Freight Transportation—Handbook" or the "U.S. Government Passenger Transportation—Handbook." To get a copy of these handbooks, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.565 What documentation is required when filing an administrative claim?

An administrative claim must be accompanied by the transportation document, payment record, reports and in-

41 CFR Ch. 102 (7-1-02 Edition)

formation available to GSA and/or to the agency involved and the written and documentary records submitted by the TSP. Oral presentations supplementing the written record are not acceptable.

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR PREPAYMENT AUDITS

§ 102-118.570 If my agency denies the TSP's challenge to the statement of difference, may the TSP appeal?

Yes, the TSP may appeal if your agency denies its challenge to the statement of difference. However, the appeal must be handled at a higher level in your agency.

§ 102-118.575 If a TSP disagrees with the decision of my agency, can the TSP appeal?

Yes, the TSP may file a claim with the GSA Audit Division, which will review the TSP's appeal of your agency's final full or partial denial of a claim. The TSP may also appeal to the GSA Audit Division if your agency has not responded to a challenge within 30 days.

§ 102-118.580 May a TSP appeal a prepayment audit decision of the GSA Audit Division?

(a) Yes, the TSP may appeal to the GSA's Board of Contract Appeals (GSBCA), under guidelines established in this subpart, or file a claim with the United States Court of Federal Claims. The TSP's request for review must be received by the GSBCA in writing within 6 months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The TSP must address requests to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501-0664.

Federal Management Regulation

§ 102-118.630

§ 102-118.585 May a TSP appeal a prepayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy available and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any of the TSP's rights. A TSP may still pursue a legal remedy through the courts.

§ 102-118.590 May my agency appeal a prepayment audit decision of the GSA Audit Division?

No, your agency may not appeal. A GSA Audit Division decision is administratively final for your agency.

§ 102-118.595 May my agency appeal a prepayment audit decision by the GSBCA?

No, your agency may not appeal a prepayment audit decision. Your agency must follow the ruling of the GSBCA.

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR POSTPAYMENT AUDITS

§ 102-118.600 When a TSP disagrees with a Notice of Overcharge resulting from a postpayment audit, what are the appeal procedures?

A TSP who disagrees with the Notice of Overcharge may submit a written request for reconsideration to the GSA Audit Division at:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.605 What if a TSP disagrees with the Notice of Indebtedness?

If a TSP disagrees with an ordinary debt, as shown on a Notice of Indebtedness, it may:

- (a) Inspect and copy the agency's records related to the claim;
- (b) Seek administrative review by the GSA Audit Division of the claim decision; and/or
- (c) Enter a written agreement for the payment of the claims.

§ 102-118.610 Is a TSP notified when GSA allows a claim?

Yes, the GSA Audit Division will acknowledge each payable claim using GSA Form 7931, Certificate of Settlement. The certificate will give a complete explanation of any amount that is disallowed. GSA will forward the certificate to the agency whose funds are to be charged for processing and payment.

§ 102-118.615 Will GSA notify a TSP if they internally offset a payment?

Yes, the GSA Audit Division will inform the TSP if they internally offset a payment.

§ 102-118.620 How will a TSP know if the GSA Audit Division disallows a claim?

The GSA Audit Division will furnish a GSA Form 7932, Settlement Certificate, to the TSP explaining the disallowance.

§ 102-118.625 Can a TSP request a reconsideration of a settlement action by the GSA Audit Division?

Yes, a TSP desiring a reconsideration of a settlement action may request a review by the Administrator of General Services.

§ 102-118.630 How must a TSP refund amounts due to GSA?

(a) TSPs must promptly refund amounts due to GSA, preferably by EFT. If an EFT is not used, checks must be made payable to "General Services Administration", including the document reference number, TSP name, bill number(s), taxpayer identification number and standard carrier alpha code, then mailed to:

General Services Administration
P.O. Box 93746
Chicago, IL 60673

(b) If an EFT address is needed, please contact the GSA Audit Division at:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.635

NOTE TO § 102-118.630: Amounts collected by GSA are returned to the Treasurer of the United States (31 U.S.C. 3726).

§ 102-118.635 Can the Government charge interest on an amount due from a TSP?

Yes, the Government can charge interest on an amount due from a TSP. This procedure is provided for under the Debt Collection Act (31 U.S.C. 3717), the Federal Claims Collection Standards (4 CFR parts 101 through 105), and 41 CFR part 105-55.

§ 102-118.640 If a TSP fails to pay or to appeal an overcharge, what actions will GSA pursue to collect the debt?

GSA will pursue debt collection through one of the following methods:

(a) When an indebted TSP files a claim, GSA will apply all or any portion of the amount it determines to be due the TSP, to the outstanding balance owed by the TSP, under the Federal Claims Collection Standards (4 CFR parts 101 through 105) and 41 CFR part 105-55;

(b) When the action outlined in paragraph (a) of this section cannot be taken by GSA, GSA will instruct one or more Government disbursing offices to deduct the amount due to the agency from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debt (31 U.S.C. 3716);

(c) When collection cannot be accomplished through either of the procedures in paragraph (a) or (b) of this section, GSA normally sends two additional demand letters to the indebted TSP requesting payment of the amount due within a specified time. Lacking a satisfactory response, GSA may place a complete stop order against amounts otherwise payable to the indebted TSP by adding the name of that TSP to the Department of the Army "List of Contractors Indebted to the United States"; and/or

(d) When collection actions, as stated in paragraphs (a) through (c) of this section are unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR parts 101 through 105.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-118.645 Can a TSP file an administrative claim on collection actions?

Yes, a TSP may file an administrative claim involving collection actions resulting from the transportation audit performed by the GSA directly with the GSA Audit Division. Any claims submitted to GSA will be considered "disputed claims" under section 4(b) of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). The TSP must file all other transportation claims with the agency out of whose activities they arose. If this is not feasible (e.g., where the responsible agency cannot be determined or is no longer in existence) claims may be sent to the GSA Audit Division for forwarding to the responsible agency or for direct settlement by the GSA Audit Division. Claims for GSA processing must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
<http://pub.fss.gsa.gov/transtrav>

§ 102-118.650 Can a TSP request a review of a settlement action by the Administrator of General Services?

Yes, a TSP desiring a review of a settlement action taken by the Administrator of General Services may request a review by the GSA Board of Contract Appeals (GSBCA) or file a claim with the United States Court of Federal Claims (28 U.S.C. 1491).

§ 102-118.655 Are there time limits on a TSP request for an administrative review by the GSBCA?

(a) Yes, the GSBCA must receive a request for review from the TSP within six months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The request must be addressed to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501-0664.

Federal Management Regulation

§ 102-118.675

§ 102-118.660 May a TSP appeal a postpayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any rights of the TSPs. A TSP may still pursue a legal remedy through the courts.

§ 102-118.665 May my agency appeal a postpayment audit decision by the GSBCA?

No, your agency may not appeal a postpayment audit decision and must follow the ruling of the GSBCA.

TRANSPORTATION SERVICE PROVIDER (TSP) NON-PAYMENT OF A CLAIM

§ 102-118.670 If a TSP cannot immediately pay a debt, can they make other arrangements for payment?

Yes, if a TSP is unable to pay the debt promptly, the Director of the GSA Audit Division has the discretion to enter into alternative arrangements for payment.

§ 102-118.675 What recourse does my agency have if a TSP does not pay a transportation debt?

If a TSP does not pay a transportation debt, GSA may refer delinquent debts to consumer reporting agencies and Federal agencies including the Department of the Treasury and Department of Justice.

PARTS 102-119—102-140 [RESERVED]

SUBCHAPTER E—TRAVEL MANAGEMENT

PART 102-141—GENERAL [RESERVED]

[RESERVED]

PARTS 102-142—102-170

SUBCHAPTER F—TELECOMMUNICATIONS

PART 102-171—GENERAL

[RESERVED]

PART 102-172—TELECOMMUNICATIONS MANAGEMENT POLICY [RESERVED]

PARTS 102-173—102-190 [RESERVED]

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

PART 102-191—GENERAL [RESERVED]

PART 102-192—MAIL MANAGEMENT

Subpart A—General Provisions

Sec.

- 102-192.5 What does this part cover?
- 102-192.10 What authority governs this part?
- 102-192.15 How are “I”, “you”, “me”, “we”, and “us” used in this part?
- 102-192.20 How are “must” and “should” used in this part?
- 102-192.25 Does this part apply to me?
- 102-192.30 What types of mail does this part apply to?
- 102-192.35 What definitions apply to this part?
- 102-192.40 Where can I get more information about the classes of mail?
- 102-192.45 How do we request a deviation from these requirements, and who can approve it?

Subpart B—General Requirements

- 102-192.50 What must all agencies do to manage their mail effectively and efficiently?
- 102-192.55 What are the additional requirements for large agencies?

Subpart C—Reporting Requirements

- 102-192.60 What must we report to GSA about our mail operations?
- 102-192.65 When must we submit reports to GSA about our mail?
- 102-192.70 What format should we use when reporting mail data to GSA?
- 102-192.75 Where do we send our mail management reports and security plan verifications?
- 102-192.80 Why does GSA require these mail reports?

Subpart D—Security Provisions

- 102-192.85 Must I have a mail security plan?
- 102-192.90 What must I include in the mail security plan?
- 102-192.95 What else should I include in the mail security plan?

Subpart E—Recommended Actions

- 102-192.100 What financial system features does GSA recommend for finance systems to keep track of mail costs?
- 102-192.105 What performance goals and measures should we use?

102-192.110 What should your agency-wide mail management plan include?

102-192.115 What less costly alternatives to expedited mail and couriers should your agency-wide mail management plan address?

Subpart F—Agency Mail Manager Responsibilities

102-192.120 What is the appropriate managerial level for an agency mail manager?

102-192.125 What are my general responsibilities as an agency mail manager?

Subpart G—Facility Mail Manager Responsibilities

102-192.130 What are my general responsibilities as a facility mail manager?

102-192.135 What should I include when contracting out all or part of the mail function?

Subpart H—Program-Level Mail Responsibilities

102-192.140 Which program levels should have a mail manager?

102-192.145 What are the mail responsibilities at the program level?

Subpart I—GSA’s Responsibilities and Services

102-192.150 What are GSA’s responsibilities in mail management?

102-192.155 What types of support does GSA offer to Federal agency mail management programs?

APPENDIX A TO PART 102-192—LARGE AGENCY MAILERS

APPENDIX B TO PART 102-192—MAIL CENTER SECURITY PLAN

AUTHORITY: Sec. 2, Pub. L. 94-575, as amended, 44 U.S.C. 2904; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

SOURCE: 67 FR 38897, June 6, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 102-192.5 What does this part cover?

This part prescribes policy and requirements for the efficient, effective, economical, and secure management of incoming, internal, and outgoing mail in Federal agencies.

Federal Management Regulation

§ 102–192.35

§ 102–192.10 What authority governs this part?

This part is governed by Section 2 of Public Law 94–575, the Federal Records Management Amendments of 1976 (44 U.S.C. 2901–2904), as amended, which requires the Administrator of General Services to provide guidance and assistance to Federal agencies on records management and defines the processing of mail by Federal agencies as a records management activity.

§ 102–192.15 How are “I”, “you”, “me”, “we”, and “us” used in this part?

In this part, “I”, “me”, and “you” (in its singular sense) refer to agency mail managers and/or facility mail managers; the context makes it clear which usage is intended in each case. “We”, “us”, and “you” (in its plural sense) refer to your Federal agency.

§ 102–192.20 How are “must” and “should” used in this part?

In this part:

- (a) “Must” identifies steps that Federal agencies are required to take; and
- (b) “Should” identifies steps that GSA recommends.

§ 102–192.25 Does this part apply to me?

Yes, this part applies to you if you work in a Federal agency, as defined in § 102–192.35.

§ 102–192.30 What types of mail does this part apply to?

This part applies to all materials that might pass through a Federal mail processing center, including:

- (a) All internal, incoming, and outgoing materials such as envelopes, bulk mail, expedited mail, individual packages up to 70 pounds, publications, and postal cards, regardless of whether or not they currently pass through a particular mail center;
- (b) Similar materials carried by agency personnel, contractors, the United States Postal Service (USPS), and all other carriers of such items; and
- (c) Electronic mail only if it is printed out and mailed as described in paragraphs (a) and (b) of this section; however, this part encourages agencies to maximize use of electronic mail in lieu

of printed media, so long as it is cost-effective.

§ 102–192.35 What definitions apply to this part?

The following definitions apply to this part:

Agency mail manager means the person who manages the overall mail communications program of a Federal agency. The *agency mail manager* also represents the agency in its relations with mail service providers, other agency mail managers, and the GSA Office of Governmentwide Policy.

Class of mail means the 5 categories of domestic mail as defined by the United States Postal Service (USPS) in the Domestic Mail Manual, (C100 through C600.1.z). These are:

- (1) Express Mail and Priority Mail.
- (2) First Class.
- (3) Standard Mail (e.g., bulk marketing mail).
- (4) Package Services.
- (5) Periodicals.

Commingling means the merging of outgoing mail from one facility or agency with outgoing mail from at least one other source.

Expedited mail is a generic term that means mail designated for delivery more quickly than the USPS’s normal delivery times (which vary by class of mail). Examples of *expedited mail* include USPS Express Mail and overnight and two-day delivery by other service providers.

Facility mail manager means the person responsible for mail in a specific Federal facility. There may be many *facility mail managers* within a Federal agency. See subpart G of this part for additional information about facility mail managers.

Federal agency (or agency) means:

- (1) Any executive department as defined in 5 U.S.C. 101;
- (2) Any wholly owned Government corporation as defined in 31 U.S.C. 9101;
- (3) Any independent establishment in the executive branch as defined in 5 U.S.C. 104; and
- (4) Any establishment in the legislative branch, except the Senate, the House of Representatives, the Architect of the Capitol, and all activities under the direction of the Architect of the Capitol (44 U.S.C. 2901(14)).

Federal facility (or facility) means any office building, installation, base, etc., where Federal agency employees work; this includes any facility where the Federal government pays postage expenses even though few Federal employees are involved in processing the mail.

Incoming mail means any mail that comes into the agency delivered by any service provider, such as the USPS, UPS, FedEx, or DHL.

Internal mail means mail generated within a Federal facility that is delivered within that facility or to a nearby facility of the same agency, so long as it is delivered by agency personnel or a dedicated agency contractor (i.e., not a service provider).

Large agency means a Federal agency whose total annual mail payments to all service providers exceeds \$1 million. See appendix A to this part for a current list of the large agencies.

Mail means the types of mail described in § 102–192.30.

Mail costs means allocations and expenses for postage and all other mail costs (e.g., payments to service providers, mail center personnel costs, mail center overhead, etc.).

Mail piece design means laying out and printing items to be mailed such that they can be processed efficiently and effectively by automated mail-processing equipment.

Mail system means all of the components of your mail operation including your methods for capturing data on your mail users, their volumes, and costs. The *mail system* includes the financial and accounting systems. It can be automated, manual or both.

Official Mail Accounting System (OMAS) is the Postal Service's government-unique system used to track postage used by most Federal agencies. OMAS is used in conjunction with each agency's online payment and accounting system (OPAC) account at the Treasury.

Outgoing mail means mail generated within a Federal facility that is going outside that facility and is delivered by a service provider.

Postage means money due or paid to any service provider.

Presort means a mail preparation used to receive a discounted mailing

rate by sorting mail according to USPS standards.

Program Level means a subsidiary part of a Federal agency that generates a significant quantity of outgoing mail. It could apply to an agency organizational entity, program, or project. (See subpart H of this part for additional information.)

Service provider means any agency or company that delivers mail. Some examples of service providers are USPS, UPS, FedEx, DHL, courier services, the Military Postal Service Agency, the State Department of Diplomatic Pouch and Mail Division and other Federal agencies providing mail services.

Special services means those mail services that require extra payment over basic postage; e.g., certified mail, business reply mail, registered mail, insurance, merchandise return service, certificates of mailing, return receipts, and delivery confirmation.

Unauthorized use of agency postage means the use of penalty or commercial mail stamps, meter impressions, or other postage indicia for personal or unofficial use.

Worksharing means cost-effective ways of processing outgoing mail that qualify for reduced postage rates; examples include presorting, bar coding, consolidating, and commingling.

§ 102–192.40 Where can I get more information about the classes of mail?

Details about mail classes can be found in the Domestic Mail Manual (DMM). The DMM is available from New Orders, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, <http://pe.usps.gov/>.

§ 102–192.45 How do we request a deviation from these requirements, and who can approve it?

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

Subpart B—General Requirements

§ 102–192.50 What must all agencies do to manage their mail effectively and efficiently?

All agencies are required to:

Federal Management Regulation

§ 102–192.80

(a) Have written security plans for mail operations at the agency level and in any facility where one or more full time personnel processes mail.

(b) Ensure that mail costs are identified at the program level within the agency; each agency will have to determine the appropriate level for this requirement because the level at which it is cost-beneficial differs widely. Program level costs can be identified from tracking mailing expenses by program areas, cost estimates, financial reports, reconciled Postal Service records, and reconciled vendor data.

(c) Beginning October 1, 2003, all payments to the United States Postal Service must be made using commercial payment processes, not OMAS.

(d) Have performance measures for mail operations at the agency level and in all subordinate locations that spend more than \$250,000 per year on postage; it is up to each agency to select the actual performance measures used.

§ 192.55 What are the additional requirements for large agencies?

All agencies that spend more than \$1 million per year on postage are additionally required to develop and maintain an annual mail management and security plan. The plan must:

(a) State total amounts paid to all service providers;

(b) Verify that facility security plans have been reviewed at the agency level. A copy of at least one large facility plan must be attached;

(c) Identify performance measures in use at the agency level;

(d) Identify the agency mail manager; and

(e) Describe the agency's plans to improve the economy and efficiency of mail operations.

Subpart C—Reporting Requirements

§ 102–192.60 What must we report to GSA about our mail operations?

If you meet the definition of a large agency (see § 102–192.35), you must report to GSA annually either your mail management and security plan, revised section(s) of that plan, or a statement verifying that your plan has been reviewed and that there are no changes

to it. The annual report must state that all facility security plans have been reviewed by a competent authority within the past year.

§ 102–192.65 When must we submit reports to GSA about our mail?

If you meet the requirement in § 102–192.35, the first annual agency mail management and security plan to GSA covering Fiscal Year 2001 is due September 4, 2002. Thereafter, fiscal year reports will be due annually on March 30. You must promptly report the name of the agency mail manager whenever it changes. GSA maintains an updated list of Federal agency mail managers at <http://www.gsa.gov/mailpolicy>.

§ 102–192.70 What format should we use when reporting mail data to GSA?

GSA will provide the format and reporting process for submitting the agency's annual mail management and security plan. These will be developed in collaboration with the Interagency Mail Policy Council. The final reporting format will be posted on the Mail Policy Communications home page at <http://www.gsa.gov/mailpolicy>.

§ 102–192.75 Where do we send our mail management reports and security plan verifications?

Submit hardcopy mail reports to: General Services Administration, Office of Governmentwide Policy, Mail Communications Policy Division (MTM), 1800 F Street, NW., STE 1221, Washington, DC 20405–0002. Electronic submissions are encouraged. Submit electronic reports to: federal.mail@gsa.gov.

§ 102–192.80 Why does GSA require these mail reports?

GSA requires these annual agency mail management and security plans to:

(a) Ensure that the large Federal mail programs have the tools and procedures in place to manage their operations efficiently and effectively;

(b) Ensure that appropriate security measures are in place; and

(c) Allow GSA to fulfill its responsibilities under the Federal Records Act, especially with regards to sharing

§ 102–192.85

best practices, training, standards, and guidelines.

Subpart D—Security Provisions

§ 102–192.85 Must I have a mail security plan?

Every Federal agency and agency location where an agency has one or more full time personnel processing mail must implement a written mail security plan. The size and scope of the security plan should be commensurate with the size and responsibilities of each agency or location. The security plan should be updated whenever circumstances warrant. As a minimum, it should be reviewed annually.

§ 102–192.90 What must I include in the mail security plan?

Your security plan must include policies and procedures for safe and secure operations consistent with your agency's core mission. It must also include:

- (a) Procedures for handling all incoming mail, regardless of service provider;
- (b) Plans for security training for mail center personnel;
- (c) Procedures for ensuring compliance with the standards established by the Interagency Security Committee that was established in accordance with Executive Order 12977, dated October 19, 1995 (3 CFR, 1995 Comp., p. 413). These standards can be found at <http://www.oca.gsa.gov>;
- (d) A list of all large facilities, their points of contact and telephone numbers; and
- (e) Plans for annual reviews of the agency's security plan and facility-level security plans.

§ 102–192.95 What else should I include in the mail security plan?

Additionally, your plan should ensure that:

- (a) Facility mail managers participate in their building security committees, wherever such committees exist;
- (b) Mail is transported in a safe manner;
- (c) X-raying of mail occurs where appropriate; and
- (d) The standards outlined in appendix B to this part are implemented.

41 CFR Ch. 102 (7–1–02 Edition)

Subpart E—Recommended Actions

§ 102–192.100 What financial system features does GSA recommend for finance systems to keep track of mail costs?

Agencies should develop or use a financial accountability system that separately tracks all mail costs to the program area or below. The system should:

- (a) Show allocations and expenses for postage and all other mail costs (*e.g.*, payments to service providers, mail center personnel costs, mail center overhead, *etc.*) separate from all other administrative expenses;
- (b) Assign control of funds for postage to the same person who has overall authority to control mail decisions for the program area;
- (c) Allow mail centers to establish systems to charge their customers for postage; and
- (d) Identify and charge mail costs that are part of printing contracts to the program level.

§ 102–192.105 What performance goals and measures should we use?

Section 102–192.50 requires all large agencies to have performance measures for mail operations at the agency level and in all subordinate locations that spend more than \$250,000 per year on postage. All other agencies are also encouraged to identify performance goals and measures for incoming and outgoing mail operations. Your performance measurement efforts should be focused on the large facilities that generate most of your mail. The range of measures will depend on the size of your agency or facility, your mission, and the life cycle cost of data collection. GSA will provide suggested performance measures through its mail policy website.

§ 102–192.110 What should your agency-wide mail management plan include?

Your agency-wide mail management plan should address:

- (a) The ways in which mail management supports your agency's mission;
- (b) Information about your agency's primary facilities;

Federal Management Regulation

§ 102-192.125

(c) Opportunities for reducing costs and/or enhancing your agency's ability to perform its mission through better mail management;

(d) How you choose the lowest cost and/or best value service provider(s) for outgoing mail, while ensuring that the Private Express Statutes and all USPS regulations are followed;

(e) Opportunities for centralized mail processing, worksharing, consolidation, and commingling to obtain postage savings;

(f) How and to what extent you will move toward ensuring that the person who controls mail decisions is the same person who controls the funds for postage;

(g) How and to what extent you will move toward ensuring that your financial systems show allocations and expenses for postage and all other mail costs separately from all other administrative expenses; and

(h) How you are developing specific performance goals, maintaining performance data systems and relating mail management goals to your agency's mission-related goals.

§ 102-192.115 What less costly alternatives to expedited mail and couriers should your agency-wide mail management plan address?

Your plan should address the following alternatives to expedited mail and couriers:

(a) First Class and Priority Mail from the USPS;

(b) Package delivery services from other service providers; and

(c) Electronic transmission via e-mail, facsimile transmission, electronic commerce, the Internet, etc.

Subpart F—Agency Mail Manager Responsibilities

§ 102-192.120 What is the appropriate managerial level for an agency mail manager?

The agency mail manager should be at a managerial level that enables him or her to fulfill the requirements of §§ 102-192.50 through 102-192.65 and § 102-192.125.

§ 102-192.125 What are my general responsibilities as an agency mail manager?

In addition to carrying out the responsibilities in § 192.50, an agency mail manager should:

(a) Establish written policies and procedures to provide timely and cost effective dispatch and delivery of mail;

(b) Ensure agency-wide awareness and compliance with standards and operational procedures established by all service providers used by the agency;

(c) Monitor the agency's mailings and other mail management activities, especially expedited mail, mass mailings, mailing lists, and couriers, and seek opportunities to implement cost-effective improvements and/or to enhance performance of the agency's mission;

(d) Develop and direct agency programs and plans for proper and cost-effective use of transportation, equipment, and supplies used for mail;

(e) Although not required for other than large agencies, develop, implement and provide to GSA the agency's annual mail management and mail security plan (see subpart C) of this part;

(f) Ensure that facility mail managers receive the training they need to perform their assigned duties;

(g) Ensure that users at the program level receive the training needed to reduce, track and budget for their mailing expenses;

(h) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39 U.S.C. 601-606) and when necessary and cost-effective;

(i) Establish written policies and procedures to minimize personal mail in incoming, outgoing, and internal agency mail;

NOTE TO PARAGRAPH (I): An agency may decide to accept and process personal mail for personnel living on a Federal facility, personnel stationed outside the United States, or personnel in other situations who would otherwise suffer hardship. Mailing costs associated with filing travel vouchers and payment of Government sponsored charge card billings are considered as "incidental expenses" as defined in the "Per Diem Allowance" in the Federal Travel Regulations (41 CFR 300-3.1).

(j) Establish and maintain a system that tracks the financial and other performance data discussed in §§102–192.50 and 102–192.100;

(k) Work with agency executives to ensure that, to the maximum practical extent, the person who makes the decision to mail any significant number of pieces of mail is the same person who controls the funds for postage;

(l) Work with agency accounting personnel to ensure that financial systems show allocations and expenses for postage and all other mail costs separately from all other administrative expenses; and

(m) Ensure that bills from all service providers are reconciled and paid on a timely basis.

Subpart G—Facility Mail Manager Responsibilities

§ 102–192.130 What are my general responsibilities as a facility mail manager?

As a Federal facility mail manager you should:

(a) Implement policies and procedures developed by the agency mail manager, including cost control procedures;

(b) Work to improve, streamline, and reduce the cost of mail practices and procedures by continually reviewing work processes throughout the facility and seeking opportunities for cost-effective change;

(c) Work closely with all facility personnel, especially the program level users who develop large mailings, to minimize postage and associated printing expenses through improved mail piece design, mail list management, electronic transmission of data in lieu of mail, and other appropriate measures; keeping current on new technologies that could be applied to reduce your mailing costs;

(d) Work with local managers to ensure that, to the maximum practical extent, the person who makes the decision to mail any significant number of pieces of mail is the same person who controls the funds for postage;

(e) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39

U.S.C. 601–606) and when necessary and cost-effective;

(f) Provide centralized control of all mail processing activities at the facility, including all regularly scheduled, small package, and expedited service providers, couriers, equipment and personnel;

(g) Review unauthorized use, loss, or theft of postage, including any unauthorized use of penalty or commercial mail stamps, meter impressions or other postage indicia, and immediately report such incidents to the agency Inspector General, internal security office, or other appropriate authority;

(h) Provide training opportunities for all levels of agency personnel at the facility on cost-effective mailing practices for incoming, outgoing, internal mail and security;

(i) Ensure that outgoing mail meets all the standards established by your service provider(s) for weight, size, hazardous materials content, etc.;

(j) Produce and implement an agency mail management and mail security plan; and

(k) Respond to the requirements of this part.

§ 102–192.135 What should I include when contracting out all or part of the mail function?

Any contract for a mail function should require compliance with:

(a) This part;

(b) The Private Express Statutes (39 U.S.C. 601–606); and

(c) All agency policies, procedures, and plans, including the agency wide mail management and mail security plan and, if applicable, facility mail security plans.

Subpart H—Program-Level Mail Responsibilities

§ 102–192.140 Which program levels should have a mail manager?

Every program level within a Federal agency that generates a significant quantity of outgoing mail should have a mail manager at the program level. It is up to each agency to decide which programs will have a full-time or part-time mail manager. In making this determination, the agency should consider the total volume of outgoing mail

Federal Management Regulation

Pt. 102–192, App. A

that is put into the mail stream by the program itself or by a printer, presort contractor, or other contractor on the program's behalf.

§ 102–192.145 What are the mail responsibilities at the program level?

Your responsibilities at the program level include:

(a) Ensuring that your program complies with all applicable mail policies and procedures, including this part;

(b) Working closely with your program personnel to minimize postage and associated printing expenses through improved mail piece design, mail list management, electronic transmission of data in lieu of mail, and other appropriate measures;

(c) Keeping current on new technologies and practices that could reduce your mailing costs and/or make your use of mail more effective;

(d) Coordinating all of your program's large mailings and print jobs to ensure that the most efficient and effective procedures are used;

(e) Providing training opportunities to your program personnel; and

(f) Working closely with the agency mail manager, mail managers at all agency facilities that handle significant quantities of mail or print functions for your program, and mail technical experts.

Subpart I—GSA's Responsibilities and Services

§ 102–192.150 What are GSA's responsibilities in mail management?

Under the Federal Records Management Amendments of 1976, as amended (44 U.S.C 2904), GSA is required to provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies (mail is one type of record, according to the Act). In carrying out its responsibilities under the Act, GSA is required to:

(a) Promulgate standards, procedures, and guidelines;

(b) Conduct research to improve practices and programs;

(c) Collect and disseminate information on training programs, technological developments, etc.;

(d) Establish an interagency committee (*i.e.*, the Interagency Mail Policy Council) to provide an exchange of information among Federal agencies;

(e) Conduct studies, inspections, or surveys;

(f) Promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies; and

(g) In the event of an emergency, communicate with agencies.

§ 102–192.155 What types of support does GSA offer to Federal agency mail management programs?

GSA supports Federal agency mail management programs by:

(a) Assisting development of agency policy and guidance in mail management and mail operations;

(b) Identifying better business practices and sharing them with Federal agencies;

(c) Developing and providing access to a Governmentwide management information system for mail;

(d) Helping agencies develop performance measures and management information systems for mail;

(e) Maintaining a current list of Agency Mail Managers;

(f) Establishing, developing and maintaining interagency mail committees;

(g) Maintaining liaison with the USPS and other service providers at the national level;

(h) Maintaining a website for mail communications policy; and

(i) Serving as a point of contact for mail issues. You may also contact GSA at: General Services Administration, Office of Governmentwide Policy, Mail Communications Policy Division (MTM), 1800 F Street, NW., STE 1221, Washington, DC 20405; e-mail: federal.mail@gsa.gov.

APPENDIX A TO PART 102–192—LARGE AGENCY MAILERS

As of December 2000, the following 26 large agencies met the definition of "large agency" in § 102–192.35:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services

Pt. 102–192, App. B

Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Treasury
Department of Veterans Affairs
Environmental Protection Agency
Equal Employment Opportunity
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
General Services Administration
Government Printing Office
Library Of Congress
National Aeronautics and Space Administration
National Science Foundation
Small Business Administration
Smithsonian Institution
Social Security Administration

APPENDIX B TO PART 102–192—MAIL CENTER SECURITY PLAN

INTRODUCTION

I. The mail center is a major gateway into any business or government agency. Each day, the typical mail center handles hundreds or thousands of items from routine letters to confidential documents, high value parcels, and even money. Security is critical for this critical nerve center. An effective mail center security program should address:

- A. Risk Analysis
- B. Employee Safety
- C. Physical Security
- D. Inbound Mail Procedures
- E. Postage Security
- F. Contractors
- G. Continuity of Operations Planning
- H. Communications
- I. Training
- J. Plan Review

II. Some agencies have satellite locations with no official mail centers. Responsibilities for processing mail are divided among administrative and support staff. Although the security plan for mail operations may be limited for these smaller sites, each of the sections A. through J. of the appendix should be adopted when appropriate.

III. A strong plan supplemented with regular training and reviews will help instill a culture that emphasizes the importance of good security. Maximize the success of the security plan by involving all members of your team—managers, employees, security managers and union representatives—during development.

A. Risk Analysis

The first step in effective security is to conduct a risk analysis for your mail operation. While there are minimum standards

41 CFR Ch. 102 (7–1–02 Edition)

that every agency should follow, your particular posture should reflect the mission of your agency.

B. Employee Safety

The anthrax attacks reminded us all how important employee safety is. We do not know whether there will be another attack, so we should take the proper steps to ensure the safety of our employees.

1. Personal protection equipment should be made available for all employees. These include gloves and masks. When using any form of respiratory equipment, the manager must make sure that proper OSHA standards are met. *See* appendix D of OSHA's Respiratory Protection standard for information about the use of respirators when such use is voluntary (29 CFR 1910.134, appendix D).

2. Also, instruct employees to wash hands regularly with soap and water. At a minimum, hands should be washed when gloves are removed, before eating, and at the end of a shift.

C. Physical Security

Managers need to address the physical security of the mail center.

1. Place the mail center in an enclosed room, with defined points of entry. Limit access to those employees who work in the mail center, or who have immediate need for access, such as known couriers.

2. Where appropriate, install controlled access equipment; key control, card readers or buzz entry are a few options. Additionally, each access point should be alarmed and monitored for after hours activity. Secure areas, such as safes or locked cabinets, should be established inside the mail center for meters, express shipments and valuables.

3. Managers should draft detailed procedures for opening and closing the mail center. Logs with checklists should be posted and signed daily.

D. Inbound Mail Procedures

1. The inbound mail operation should be separate from the rest of the mail center. All incoming mail should be isolated in an area where it can be inspected. Delivery personnel should have limited access to the facility and should be serviced at a counter.

2. Establish a closed-loop manifest system for all accountable letters and packages (e.g., certified mail, UPS, FedEx). Verify the delivery manifest sheet to ensure that you have received all packages listed. All accountable mail should be signed for whenever possession changes. Always require a signature at the final point of delivery. File copies of the manifest by date.

3. If possible, acquire an x-ray machine to scan mail. All mail, regardless of carrier, should be x-rayed. If volume does not permit this, x-ray all packages.

4. Mail center employees should be trained to recognize and report suspicious packages. Characteristics of a suspicious package or letter can vary depending upon the type of mail your operation regularly processes (see <http://www.fbi.gov/pressrel/pressrel01/mail3.pdf> for more information).

E. Postage Security

Postage theft is a Federal offense and managers should be proactive in this area.

1. Managers should integrate accounting procedures for all forms of postage—meters, stamps and permits. Meter logs must be accurately kept, and meters should be locked when not in use. Where feasible, the meter should be removed from the equipment and stored in a locked cabinet during off-hours.

2. Establish additional controls to ensure proper access and accountability for permit envelopes and labels. Controls should be established for stamps and other carriers as well.

F. Contractors

Some agencies use contractors to process their mail. This could be either an outsource provider that runs your mail center or a lettershop that handles your presort. It's important to remember that security of the mail is still the responsibility of the agency. Include the key points from your security plan in every contract, and conduct periodic reviews separate from the contract process.

G. Continuity of Operations Planning

1. Managers should have a written continuity of operations plan (COOP) to deal with emergency situations. The plan should include:

- a. Name(s) of Mail Security Coordinator/Response Team
- b. Procedures on how to respond to a threat or incident
- c. Who to contact in the event of an emergency
- d. Location and contents of "fly-away kit"
- e. Location/phone numbers of backup facility

f. A list of critical documents and mail required for the agency to complete its mission

2. Copies of this plan should be stored in easily accessible areas, including off-site.

3. Also, you need to test the plan on a quarterly basis. Verify that all the information is up-to-date, that contacts, facilities access, and the call trees are correct.

H. Communications

A good communications program is part of any successful mail operation and is critical for security issues. Make sure that the information being shared is factual, not opinion, and verify that it is up-to-date.

1. Schedule regular meetings with a representative from the senior management of

your agency (Executive Secretariat, Administrator, *etc.*). Review the steps you've taken to secure the mail, and address any outstanding issues.

2. Develop a communications plan to be executed when responding to a threat. This plan should cover how to both acquire and distribute information. Prepare a list of trusted resources to acquire timely and accurate information (*e.g.*, GSA, USPS, CDC, *etc.*). Organize a protocol for the approval and distribution of information on the status of the mail operation.

I. Training

Education and awareness are the essential ingredients to preparedness. Employees must remain aware of their surroundings and the packages they handle. You must carefully design and vigorously monitor your security program to reduce the risk for all.

1. Through training you can develop a culture of security awareness in your operation. Essential to ensuring employee confidence in their safety is the inclusion of union representatives or other employee representatives in developing and giving training. Managers should consider security training a critical element of their job.

2. A complete training program will include:

- a. Basic security procedures;
- b. Recognizing and reporting suspicious packages;
- c. Proper use of personal protection equipment;
- d. Responding to a biological threat; and
- e. Responding to a bomb threat.

3. Maintain a log of all employees and training attended, including the date completed. Follow up with refresher training on a regular basis.

4. In addition to educating the employees who work for you, you must educate all employees who work in the facility on best mail practices including security measures. Employee awareness of the measures you have taken leads to confidence in the safety of the packages that are delivered to their desktops.

J. Plan Review

The General Services Administration strongly recommends external review of your security plan. This may include a review by a consultant, your agency security department, or a peer review.

PART 102-193—CREATION, MAINTENANCE, AND USE OF RECORDS

Sec.

102-193.5 What does this part cover?

102-193.10 What are the goals of the Federal Records Management Program?

§ 102-193.5

102-193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the heads of Federal agencies?

102-193.20 What are the specific agency responsibilities for records management?

102-193.25 What type of records management business process improvements should my agency strive to achieve?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 48358, Sept. 20, 2001, unless otherwise noted.

§ 102-193.5 What does this part cover?

This part prescribes policies and procedures related to the General Service Administration's (GSA) role to provide guidance on economic and effective records management for the creation, maintenance and use of Federal agencies' records. The National Archives and Records Administration Act of 1984 (the Act) (44 U.S.C. chapter 29) amended the records management statutes to divide records management responsibilities between GSA and the National Archives and Records Administration (NARA). Under the Act, GSA is responsible for economy and efficiency in records management and NARA is responsible for adequate documentation and records disposition. GSA regulations are codified in this part and NARA regulations are codified in 36 CFR Chapter XII. The policies and procedures of this part apply to all records, regardless of medium (e.g., paper or electronic), unless otherwise noted.

§ 102-193.10 What are the goals of the Federal Records Management Program?

The statutory goals of the Federal Records Management Program are:

(a) Accurate and complete documentation of the policies and transactions of the Federal Government.

(b) Control of the quantity and quality of records produced by the Federal Government.

(c) Establishment and maintenance of management controls that prevent the creation of unnecessary records and promote effective and economical agency operations.

41 CFR Ch. 102 (7-1-02 Edition)

(d) Simplification of the activities, systems, and processes of records creation, maintenance, and use.

(e) Judicious preservation and disposal of records.

(f) Direction of continuing attention on records from initial creation to final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork.

§ 102-193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the Heads of Federal agencies?

(a) The Administrator of General Services (the Administrator) provides guidance and assistance to Federal agencies to ensure economical and effective records management. Records management policies and guidance established by GSA are contained in this part and in parts 102-194 and 102-195 of this chapter, records management handbooks, and other publications issued by GSA.

(b) The Archivist of the United States (the Archivist) provides guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and to ensure proper records disposition. Records management policies and guidance established by the Archivist are contained in 36 CFR Chapter XII and in bulletins and handbooks issued by the National Archives and Records Administration (NARA).

(c) The Heads of Federal agencies must comply with the policies and guidance provided by the Administrator and the Archivist.

§ 102-193.20 What are the specific agency responsibilities for records management?

You must follow both GSA regulations in this part and NARA regulations in 36 CFR Chapter XII to carry out your records management responsibilities. To meet the requirements of this part, you must take the following actions to establish and maintain the agency's records management program:

(a) Assign specific responsibility to develop and implement agencywide records management programs to an

Federal Management Regulation

Pt. 102-194

office of the agency and to a qualified records manager.

(b) Follow the guidance contained in GSA handbooks and bulletins and comply with NARA regulations in 36 CFR Chapter XII when establishing and implementing agency records management programs.

(c) Issue a directive establishing program objectives, responsibilities, authorities, standards, guidelines, and instructions for a records management program.

(d) Apply appropriate records management practices to all records, irrespective of the medium (e.g., paper, electronic, or other).

(e) Control the creation, maintenance, and use of agency records and the collection and dissemination of information to ensure that the agency:

(1) Does not accumulate unnecessary records while ensuring compliance with NARA regulations for adequate and proper documentation and records disposition in 36 CFR parts 1220 and 1228.

(2) Does not create forms and reports that collect information inefficiently or unnecessarily.

(3) Reviews all existing forms and reports (both those originated by the agency and those responded to by the agency but originated by another agency or branch of Government) periodically to determine if they can be improved or canceled.

(4) Maintains records economically and in a way that allows them to be retrieved quickly and reliably.

(5) Keeps mailing and copying costs to a minimum.

(f) Establish standard stationery formats and styles.

(g) Establish standards for correspondence to use in official agency communications, and necessary copies required, and their distribution and purpose.

§ 102-193.25 What type of records management business process improvements should my agency strive to achieve?

Your agency should strive to:

(a) Improve the quality, tone, clarity, and responsiveness of correspondence;

(b) Design forms that are easy to fill-in, read, transmit, process, and retrieve, and reduce forms reproduction costs;

(c) Provide agency managers with the means to convey written instructions to users and document agency policies and procedures through effective directives management;

(d) Provide agency personnel with the information needed in the right place, at the right time, and in a useful format;

(e) Eliminate unnecessary reports and design necessary reports for ease of use;

(f) Provide rapid handling and accurate delivery of mail at minimum cost; and

(g) Organize agency files in a logical order so that needed records can be found rapidly to conduct agency business, to ensure that records are complete, and to facilitate the identification and retention of permanent records and the prompt disposal of temporary records. Retention and disposal of records is governed by NARA regulations in 36 CFR Chapter XII.

PART 102-194—STANDARD AND OPTIONAL FORMS MANAGEMENT PROGRAM

Sec.

102-194.5 What is the Standard and Optional Forms Management Program?

102-194.10 What is a Standard form?

102-194.15 What is an Optional form?

102-194.20 What is an electronic Standard or Optional form?

102-194.25 What is an automated Standard or Optional format?

102-194.30 What role does my agency play in the Standard and Optional Forms Management Program?

102-194.35 Should I create electronic Standard or Optional forms?

102-194.40 For what Standard or Optional forms should an electronic version not be made available?

102-194.45 Who should I contact about Standard and Optional forms?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 48358, Sept. 20, 2001, unless otherwise noted.

§ 102-194.5 What is the Standard and Optional Forms Management Program?

The Standard and Optional Forms Management Program is a Governmentwide program that promotes economies and efficiencies through the development, maintenance and use of common forms. The General Services Administration (GSA) provides additional guidance on the Standard and Optional Forms Management Program through an external handbook called Standard and Optional Forms Procedural Handbook. You may obtain a copy of the handbook from:

Standard and Optional Forms Management
Office General Services Administration
(Forms-XR)
1800 F Street, NW.; Room 7126
Washington, DC 20405-0002
(202) 501-0581
<http://www.gsa.gov/forms>

§ 102-194.10 What is a Standard form?

A Standard form is a fixed or sequential order of data elements, prescribed by a Federal agency through regulation, approved by GSA for mandatory use, and assigned a Standard form number. This criterion is the same whether the form resides on paper or purely electronic.

§ 102-194.15 What is an Optional form?

An Optional form is approved by GSA for nonmandatory Governmentwide use and is used by two or more agencies. This criteria is the same whether the form resides on paper or purely electronic.

§ 102-194.20 What is an electronic Standard or Optional form?

An electronic Standard or Optional form is an officially prescribed set of data residing in an electronic medium that is used to produce a mirror-like image or as near to a mirror-like image as the creation software will allow of the officially prescribed form.

§ 102-194.25 What is an automated Standard or Optional format?

An automated Standard or Optional format is an electronic version of the officially prescribed form containing the same data elements and used for the electronic transaction of informa-

tion in lieu of using a Standard or Optional form.

§ 102-194.30 What role does my agency play in the Standard and Optional Forms Management Program?

Your agency head or designee's role is to:

(a) Designate an agency-level Standard and Optional Forms Liaison representative and alternate, and notify GSA, in writing, of their names, titles, mailing addresses, telephone numbers, fax numbers, and e-mail addresses within 30 days of the designation or redesignation.

(b) Promulgate Governmentwide Standard forms under the agency's statutory or regulatory authority in the Federal Register, and issue procedures on the mandatory use, revision, or cancellation of these forms.

(c) Ensure that the agency complies with the provisions of the Government Paperwork Elimination Act (GPEA) (Public Law 105-277, 112 Stat 2681), Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 74d), as amended, the Architectural and Transportation Barriers Compliance Board (Access Board) Standards (36 CFR part 1194), and OMB implementing guidance. In particular, agencies should allow the submission of Standard and Optional forms in an electronic/automated version unless the form is specifically exempted by § 102-194.40.

(d) Issue Governmentwide Optional forms when needed by two or more agencies and announce the availability, revision, or cancellation of these forms. Forms prescribed through a regulation for use by the Federal Government must be issued as a Standard form.

(e) Obtain GSA approval for each new, revised or canceled Standard and Optional form, 60 days prior to planned implementation. Certify that the forms comply with all applicable laws and regulations. Provide an electronic form unless exempted by § 102-194.40. Revised forms not approved by GSA will result in cancellation of the form.

(f) Provide GSA with both an electronic (unless exempted by § 102-194.40) and paper version of the official image of the Standard or Optional form prior to implementation.

Federal Management Regulation

§ 102-195.5

(g) Obtain the prescribing agency's approval for exceptions to Standard and Optional forms, including electronic forms or automated formats prior to implementation.

(h) Review annually agency prescribed Standard and Optional forms, including exceptions, for improvement, consolidation, cancellation, or possible automation. The review must include approved electronic versions of the forms.

(i) Coordinate all health-care related Standard and Optional forms through GSA for the approval of the Interagency Committee on Medical Records (ICMR).

(j) Promote the use of electronic forms within the agency by following what the Government Paperwork Elimination Act (GPEA) prescribes and all guidance issued by the Office of Management and Budget and other responsible agencies. This guidance will promote the use of electronic transactions and electronic signatures.

(k) Notify GSA of the replacement of any Standard or Optional form by an automated format or electronic form, and its impact on the need to stock the paper form. GSA's approval is not necessary for this change, but a one-time notification should be made.

(l) Follow the specific instructions in the Standard and Optional Forms Procedural Handbook.

§ 102-194.35 Should I create electronic Standard or Optional forms?

Yes, you should create electronic Standard or Optional forms, especially when forms are used to collect information from the public. GSA will not approve a new or revision to a Standard or Optional form unless an electronic form is being made available. Only forms covered by § 102-194.40 are exempt from this requirement. Furthermore, you should to the extent possible, use electronic form products and services that are based on open standards. However, the use of proprietary products is permitted, provided that the end user is not required to purchase a specific product or subscription to use the electronic Standard or Optional form.

§ 102-194.40 For what Standard or Optional forms should an electronic version not be made available?

All forms should include an electronic version unless it is not practicable to do so. Areas where it may not be practicable include where the form has construction features for specialized use (*e.g.*, labels), to prevent unauthorized use or could otherwise risk a security violation, (*e.g.*, classification cover sheets), or require unusual production costs (*e.g.*, specialized paper or envelopes). Such forms can be made available as an electronic form only if the originating agency approves an exception to do so. (See the Standard and Optional Forms Procedural Handbook for procedures and a list of these forms).

§ 102-194.45 Who should I contact about Standard and Optional forms?

For Standard and Optional forms, you should contact the:

Standard and Optional Forms Management
Office General Services Administration
(Forms-XR)
1800 F Street, NW.; Room 7126
Washington, DC 20405-0002
(202) 501-0581

PART 102-195—INTERAGENCY REPORTS MANAGEMENT PROGRAM

Sec.

102-195.5 What is the Interagency Reports Management Program and what is its purpose?

102-195.10 What is an interagency report?

102-195.15 What must an agency do to implement the Interagency Reports Management Program?

102-195.20 Are any interagency reports exempt from this program?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 48358, Sept. 20, 2001, unless otherwise noted.

§ 102-195.5 What is the Interagency Reports Management Program and what is its purpose?

The Interagency Reports Management Program managed by GSA ensures that interagency reports and recordkeeping requirements are necessary, cost-effective, and comply with applicable laws and regulations.

§ 102–195.10

§ 102–195.10 What is an interagency report?

An interagency report is a repetitive reporting requirement imposed by an agency on one or more other agencies.

§ 102–195.15 What must an agency do to implement the Interagency Reports Management Program?

To implement the Interagency Reports Management Program an agency must:

(a) Annually review all interagency reporting requirements imposed on other agencies to assure that they remain necessary.

(b) Consistent with law and regulation, seek information that other agencies have already obtained from the public rather than asking the public to provide the information again.

(c) Every three years beginning November 1, 2001, provide the following information to GSA for each interagency report that will require the responding agencies as a whole to take more than 100 hours complying with it:

(1) Title.

(2) Purpose.

(3) Estimate of the reporting costs for the life of the report or for three years, whichever is sooner.

(4) An estimate of the time you will need to collect this information; *e.g.*, six months or six years.

(5) The name, telephone number, and e-mail address for the point of contact for each interagency report.

(6) Whether the report can be provided electronically, and if not, when such submissions will be allowed.

(d) Provide supporting documentation for cost estimates for review by GSA and responding agencies, if requested.

41 CFR Ch. 102 (7–1–02 Edition)

(e) Notify GSA and responding agencies when an interagency report is no longer needed.

(f) Provide responding agencies an opportunity to comment on any new or proposed revision to an interagency reporting requirement.

(g) Send information asked for in paragraphs (c), (d) and (e) of this section, along with any unresolved comments from responding agencies concerning an interagency reporting requirement in accordance with paragraph (f) of this section to:

General Services Administration
Strategic IT Issues Division (MKB)
1800 F Street, NW.
Washington, DC 20405

§ 102–195.20 Are any interagency reports exempt from this program?

Yes, the following interagency reports are exempt from the Interagency Reports Management Program:

(a) Legislative branch reports;

(b) Office of Management and Budget (OMB) and other Executive Office of the President reports;

(c) Judicial branch reports required by court order or decree; and

(d) Reporting requirements for security of classified information. However, interagency reporting requirements for nonsensitive or unclassified sensitive information are not exempt, even if the information is later given a security classification by the requesting agency.

PART 102–196—FEDERAL FACILITY RIDESHARING [RESERVED]

PARTS 102–197—102–220 [RESERVED]

SUBCHAPTERS H–Z [RESERVED]

CHAPTERS 103–104 [RESERVED]

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

<i>Part</i>		<i>Page</i>
105-1	Introduction	231
105-8	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by General Services Administration	233
105-50	Provision of special or technical services to State and local units of government	244
105-51	Uniform relocation assistance and real property acquisition for Federal and federally assisted programs	249
105-53	Statement of organization and functions	249
105-54	Advisory committee management	256
105-55	Collection of claims owed the United States	267
105-56	Salary offset for indebtedness of General Services Administration employees to the United States ...	271
105-57	Collection of debts by tax refund offset	276
105-60	Public availability of agency records and informa- tional materials	277
105-62	Document security and declassification	294
105-64	Regulations implementing the Privacy Act of 1974	299
105-67	Sale of personal property	308
105-68	Governmentwide debarment and suspension (non- procurement) and governmentwide requirements for drug-free workplace (grants)	309
105-69	New restrictions on lobbying	328
105-70	Implementation of the Program Fraud Civil Rem- edies Act of 1986	339
105-71	Uniform administrative requirements for grants and cooperative agreements with State and local governments	354
105-72	Uniform administrative requirements for grants and agreements with institutions of higher edu- cation, hospitals, and other non-profit organiza- tions	381
105-735	Standards of conduct	408

PART 105-1—INTRODUCTION

Sec.

105-1.000-50 Scope of part.

Subpart 105-1.1—Regulations System

105-1.100 Scope of subpart.

105-1.101 General Services Administration
Property Management Regulations.

105-1.101-50 Exclusions.

105-1.102 Relationship of GSPMR to FPMR.

105-1.104 Publication of GSPMR.

105-1.106 Applicability.

105-1.109 Numbering.

105-1.109-50 General plan.

105-1.109-51 Arrangement.

105-1.109-52 Cross-references.

105-1.110 Deviation.

105-1.150 Citation.

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

SOURCE: 39 FR 25231, July 9, 1974, unless
otherwise noted.

§ 105-1.000-50 Scope of part.

This part describes the method by which the General Services Administration (GSA) implements and supplements the Federal Property Management Regulations (FPMR) and implements certain regulations prescribed by other agencies. It contains procedures that implement and supplement part 101-1 of the FPMR.

Subpart 105-1.1—Regulations System

§ 105-1.100 Scope of subpart.

This subpart establishes the General Services Administration Property Management Regulations (GSPMR) and provides certain introductory material.

§ 105-1.101 General Services Administration Property Management Regulations.

The General Services Administration Property Management Regulations (GSPMR) include the GSA property management policies and procedures which, together with the Federal Property Management Regulations, certain regulations prescribed by other agencies, and various GSA orders govern the management of property and records and certain related activities of GSA. They may contain policies and

procedures of interest to other agencies and the general public and are prescribed by the Administrator of General Services in this chapter 105.

§ 105-1.101-50 Exclusions.

(a) Certain GSA property management and related policies and procedures which come within the scope of this chapter 105 nevertheless may be excluded therefrom when there is justification. These exclusions may include the following categories:

(1) Subject matter that bears a security classification;

(2) Policies and procedures that are expected to be effective for a period of less than 6 months;

(3) Policies and procedures that are effective on an experimental basis for a reasonable period;

(4) Policies and procedures pertaining to other functions of GSA as well as property management functions and there is need to make the issuance available simultaneously to all GSA employees involved; and

(5) Where speed of issuance is essential, numerous changes are required in chapter 105, and all necessary changes cannot be made promptly.

(b) Property management policies and procedures issued in other than the FPMR system format under paragraphs (a)(4) and (5) of this section, shall be codified into chapter 105 at the earliest practicable date, but in any event not later than 6 months from date of issuance.

§ 105-1.102 Relationship of GSPMR to FPMR.

(a) GSPMR implement and supplement the FPMR and implement certain other regulations. They are part of the General Services Administration Regulations System. Material published in the FPMR (which has Governmentwide applicability) becomes effective throughout GSA upon the effective date of the particular FPMR material. In general, the FPMR that are implemented and supplemented shall not be repeated, paraphrased, or otherwise restated in chapter 105.

(b) Implementing is the process of expanding upon the FPMR or other Government-wide regulations.

§ 105-1.104

Supplementing is the process of prescribing material for which there is no counterpart in the Government-wide regulations.

(c) GSPMR may deviate from the regulations that are implemented when a deviation (see §105-1.110) is authorized in and explicitly referenced to such regulations. Where chapter 105 contains no material implementing the FPMR, the FPMR shall govern.

§ 105-1.104 Publication of GSPMR.

(a) Most GSPMR are published in the FEDERAL REGISTER. This practice helps to ensure that interested business concerns, other agencies, and the public are apprised of GSA policies and procedures pertaining to property and records management and certain related activities.

(b) Most GSPMR are published in cumulative form in chapter 105 of title 41 of the Code of Federal Regulations. The FEDERAL REGISTER and title 41 of the Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 105-1.106 Applicability.

Chapter 105 applies to the management of property and records and to certain other programs and activities of GSA. Unless otherwise specified, chapter 105 applies to activities outside as well as within the United States.

§ 105-1.109 Numbering.

§ 105-1.109-50 General plan.

Chapter 105 is divided into parts, subparts, and further subdivisions as necessary.

§ 105-1.109-51 Arrangement.

(a) Parts 105-2 through 105-49 are used for GSPMR that implement regulations in the corresponding parts of chapter 101. This practice results in comparable grouping by subject area without establishment of subchapters.

(b) Parts 105-50 and above are used for GSPMR that supplement regulations in the FPMR and implement regulations of other agencies. Part numbers are assigned so as to accomplish a similar subject area grouping. Regulations on advisory committee manage-

41 CFR Ch. 105 (7-1-02 Edition)

ment are recodified as part 105-54 to place them in the appropriate subject area category. Regulations on standards of conduct remain in part 105-735 because the number 735 identifies regulations of the U.S. Civil Service Commission and various civil agencies on this subject.

§ 105-1.109-52 Cross-references.

(a) Within chapter 105, cross-references to the FPMR shall be made in the same manner as used within the FPMR. Illustrations of cross-references to the FPMR are:

- (1) Part 101-3;
- (2) Subpart 101-3.1;
- (3) §101-3.413-5.

(b) Within chapter 105, cross-references to parts, subparts, sections, and subsections of chapter 105 shall be made in a manner generally similar to that used in making cross-references to the FPMR. For example, this paragraph would be referenced as §105-1.109-52(b).

§ 105-1.110 Deviation.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with a policy or procedure prescribed in the Federal Property Management Regulations, are prohibited unless such deviations have been requested from and approved by the Administrator of General Services or his authorized designee. Deviations may be authorized by the Administrator of General Services or his authorized designee when so doing will be in the best interest of the Government. Request for deviations shall clearly state the nature of the deviation and the reasons for such special action.

(b) Requests for deviations from the FPMR shall be sent to the General Services Administration for consideration in accordance with the following:

(1) For onetime (individual) deviations, requests shall be sent to the address provided in the applicable regulation. Lacking such direction, requests shall be sent to the Administrator of General Services, Washington, DC 20405.

General Services Administration

§ 105-8.103

(2) For class deviations, requests shall be sent to only the Administrator of General Services.

[55 FR 1673, Jan. 18, 1990]

§ 105-1.150 Citation.

(a) In formal documents, such as legal briefs, citations of chapter 105 material shall include a citation to title 41 of the Code of Federal Regulations or other titles as appropriate; e.g., 41 CFR 105-1.150.

(b) Any section of chapter 105, for purpose of brevity, may be informally identified as “GSPMR” followed by the section number. For example, this paragraph would be identified as “GSPMR 105-1.150(b).”

PART 105-8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Sec.

- 105-8.101 Purpose.
- 105-8.102 Application.
- 105-8.103 Definitions.
- 105-8.104—105-8.109 [Reserved]
- 105-8.110 Self-evaluation.
- 105-8.111 Notice.
- 105-8.112—105-8.129 [Reserved]
- 105-8.130 General prohibitions against discrimination.
- 105-8.131—105-8.139 [Reserved]
- 105-8.140 Employment.
- 105-8.141—105-8.147 [Reserved]
- 105-8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.
- 105-8.149 Program accessibility: Discrimination prohibited.
- 105-8.150 Program accessibility: Existing facilities.
- 105-8.150-1 General.
- 105-8.150-2 Methods.
- 105-8.150-3 Time period for compliance.
- 105-8.150-4 Transition plan.
- 105-8.151 Program accessibility: New construction and alterations.
- 105-8.152 Program accessibility: Assignment of space.
- 105-8.153 Program accessibility: Interagency cooperation.
- 105-8.153-1 General.
- 105-8.153-2 Requests from occupant agencies.
- 105-8.154 Program accessibility: Exceptions.
- 105-8.155—105-8.159 [Reserved]
- 105-8.160 Communications.

- 105-8.161—105-8.169 [Reserved]
- 105-8.170 Compliance procedures.
- 105-8.170-1 Applicability.
- 105-8.170-2 Employment complaints.
- 105-8.170-3 Responsible Official.
- 105-8.170-4 Filing a complaint.
- 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.
- 105-8.170-6 Acceptance of complaint.
- 105-8.170-7 Investigation/conciliation.
- 105-8.170-8 Letter of findings.
- 105-8.170-9 Filing an appeal.
- 105-8.170-10 Acceptance of appeals.
- 105-8.170-11 Hearing.
- 105-8.170-12 Decision.
- 105-8.170-13 Delegation.
- 105-8.171 Complaints against an occupant agency.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 56 FR 9871, Mar. 8, 1991, unless otherwise noted.

§ 105-8.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105-8.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105-8.103 Definitions.

For purposes of this part, the term—
Agency means the General Services Administration (GSA), except when the context indicates otherwise.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio

recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation program means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning

disabilities. The term "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation

General Services Administration

§ 105-8.130

in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105-8.140.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28); and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100-630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration of historic properties.

§§ 105-8.104—105-8.109 [Reserved]

§ 105-8.110 Self-evaluation.

(a) The agency shall, by March 9, 1992, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons consulted;

(2) A description of the areas examined and any problems identified and;

(3) A description of any modifications made or to be made.

§ 105-8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105-8.112—105-8.129 [Reserved]

§ 105-8.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to

provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licenses or certified entities that subject qualified individuals with handicaps to discrimi-

nation on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by part.

(b) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(c) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105-8.131—105-8.139 [Reserved]

§ 105-8.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 105-8.141—105-8.147 [Reserved]

§ 105-8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this part concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105-8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105-8.150 and 105-8.154, no qualified individual with handicaps shall, because

General Services Administration

§ 105-8.150-4

the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105-8.150 Program accessibility: Existing facilities.

§ 105-8.150-1 General.

The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This section does not—

(a) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(b) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property.

§ 105-8.150-2 Methods.

(a) *General.* The agency may comply with the requirements of § 105-8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with

handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs.* In meeting the requirements of § 105-8.105-1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to a historic property is not required because of §§ 105-8.105-1(b) or 105-8.154 alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of a historic property that cannot otherwise be made accessible;

(2) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(3) Adopting other innovative methods.

§ 105-8.150-3 Time period for compliance.

The agency shall comply with the obligations established under § 105-8.150 by May 7, 1991; except where structural changes in facilities are undertaken, such changes shall be made by March 8, 1994, but in any event as expeditiously as possible.

§ 105-8.150-4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 9, 1992; the transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs and activities to individuals with handicaps;

§ 105–8.151

(b) Describe in detail the methods that will be used to make the facilities accessible;

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105–8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(d) Indicate the official responsible for implementation of the plan.

§ 105–8.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 105.8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

41 CFR Ch. 105 (7–1–02 Edition)

The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105–8.153 Program accessibility: Interagency cooperation.

§ 105–8.153–1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105–8.153–2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be

General Services Administration

§ 105-8.160

completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the times frames which the actions are required to be completed.

§ 105-8.154 Program accessibility: Exceptions.

Sections 105-8.150, 105-8.152, and 105-8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.155—105-8.159 [Reserved]

§ 105-8.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 105-8.160 would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with §105-8.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.161—105-8.169 [Reserved]

§ 105-8.170 Compliance procedures.

§ 105-8.170-1 Applicability.

Except as provided in §105-8.170-2, §§105-8.170 through 105-8.170-13 apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105-8.170-2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

§ 105-8.170-3 Responsible Official.

The Responsible Official shall coordinate implementation of §§105-8.170 through 105-8.170-13.

§ 105-8.170-4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any persons who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representa-

tive of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this section, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsible Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division (AKC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

§ 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105-8.170-6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with §105-8.170-4 and over which the agency has jurisdiction. The Official shall notify the complainant and

General Services Administration

§ 105-8.170-9

the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant within 30 days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a position thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-day period as provided in § 105-8.170-4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this part.

(d) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

§ 105-8.170-7 Investigation/conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official du-

ties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105-8.170-8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

(b) A description of a remedy for each violation found;

(c) A notice of the right of the complainant and the respondent to appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105-8.170-9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the