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Subtitle C—Federal Property Management Regulations System (Continued)

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER A—GENERAL

Part		*Page*
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	36
102–6—102–30	[Reserved]	

SUBCHAPTER B—PERSONAL PROPERTY

102–31	General [Reserved]	
102–32	Management of personal property [Reserved]	
102–33	Management of government aircraft	41
102–34	Motor vehicle management	68
102–35	Disposition of personal property	82
102–36	Disposition of excess personal property	84
102–37	Donation of surplus personal property	107
102–38	Sale of personal property	139
102–39	Replacement of personal property pursuant to the exchange/sale authority	153
102–40	[Reserved]	
102–41	Disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property	158
102–42	Utilization, donation, and disposal of foreign gifts and decorations	167
102–43—102–70	[Reserved]	

SUBCHAPTER C—REAL PROPERTY

102–71	General	175
102–72	Delegation of authority	180
102–73	Real estate acquisition	185
102–74	Facility management	198
102–75	Real property disposal	221
102–76	Design and construction	282

Part		Page
102–77	Art-in-architecture	287
102–78	Historic preservation	288
102–79	Assignment and utilization of space	291
102–80	Safety and environmental management	296
102–81	Security	303
102–82	Utility services	304
102–83	Location of space	305
102–84	Annual real property inventories	311
102–85	Pricing policy for occupancy in GSA space	314
102–86—102–115	[Reserved]	

SUBCHAPTER D—TRANSPORTATION

102–116	General [Reserved]	
102–117	Transportation management	329
102–118	Transportation payment and audit	344
102–119—102–140	[Reserved]	

SUBCHAPTER E—TRAVEL MANAGEMENT [RESERVED]

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

SUBCHAPTER F—TELECOMMUNICATIONS

102–171	General [Reserved]	
102–172	Telecommunications management policy [Reserved]	
102–173	Internet GOV Domain	372
102–174—102–190	[Reserved]	

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

102–191	General [Reserved]	
102–192	Mail management	376
102–193	Creation, maintenance, and use of records	386
102–194	Standard and optional forms management program	388
102–196	Federal facility ridesharing [Reserved]	
102–197—102–220	[Reserved]	

SUBCHAPTERS H–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 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—

(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 looseleaf 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.

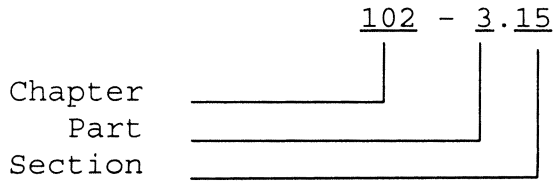
§ 102–2.40 May an agency issue implementing and supplementing regulations for the FMR?

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:

(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.

§ 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

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?

102–3.110 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.

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

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 advisory 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

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

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.

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:

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.

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, 2 U.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 (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

Key points and principles	Section(s)	Question(s)	Guidance
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.

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 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 accordance 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;

(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:

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).

Key points and principles	Section(s)	Question(s)	Guidance
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:

(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 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 supplement), 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 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.

(l) 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 provided 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:

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.

Key points and principles	Section	Question(s)	Guidance
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?	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.
		2. If so, can different persons represent the organization at different meetings?	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. 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.

Key points and principles	Section	Question(s)	Guidance
			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 subcomponents, 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 meetings 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.

(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 report 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:

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.

Key points and principles	Section(s)	Question(s)	Guidance
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.

Key points and principles	Section(s)	Question(s)	Guidance
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. (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.)

Key points and principles	Section(s)	Question(s)	Guidance
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.

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 substantially 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:

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 ASSISTANCE 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 concerning 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 determinations?
102–5.45 Should determinations be completed before an employee is provided with home-to-work transportation?
102–5.50 May determinations be made in advance for employees who respond to unusual 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 making a determination to authorize home-to-work transportation for field work?
102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?
102–5.80 What are some examples of positions that may involve field work?
102–5.85 What information should our determination for field work include if positions 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 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?
102–5.100 May we use home-to-work transportation for other than official purposes?
102–5.105 May others accompany an employee using home-to-work transportation?

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

AUTHORITY: 40 U.S.C. 121(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 answers in this part are regulatory in effect. 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 appropriate.

§ 102–5.10 What does this part cover?

This part covers the use of Government 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 employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

§ 102–5.20 Who is not covered by this part?

This part does not cover:

(a) Employees who use a passenger carrier in conjunction with official travel, including temporary duty (TDY) or relocation;

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

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

(c) Employees who use a passenger carrier for transportation between places of employment and mass transit facilities (*see, e.g.*, 41 CFR 102–34.210).

[65 FR 54966, Sept. 12, 2000, as amended at 75 FR 41995, July 20, 2010]

§ 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.

§ 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 include 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 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 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 GOVERNMENT AIRCRAFT

Subpart A—How These Rules Apply

GENERAL

Sec.
102–33.5 To whom do these rules apply?
102–33.10 May we request approval to deviate from these rules?
102–33.15 How does this part relate to the Federal Aviation Regulations?
102–33.20 What definitions apply to this part?

RESPONSIBILITIES

102–33.25 What are our responsibilities under this part?
102–33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?
102–33.35 How can we get help in carrying out our responsibilities?
102–33.40 What are GSA's responsibilities for Federal aviation management?

Subpart B—Acquiring Government Aircraft and Aircraft Parts

OVERVIEW

102–33.45 What is a Government aircraft?
102–33.50 Under what circumstances may we acquire Government aircraft?
102–33.55 Are there restrictions on acquiring Government aircraft?
102–33.60 What methods may we use to acquire Government aircraft?
102–33.65 What is the process for acquiring Government aircraft?

PLANNING TO ACQUIRE GOVERNMENT AIRCRAFT

102–33.70 What directives must we follow when planning to acquire Government aircraft?
102–33.75 What other guidance is available to us in planning to acquire Government aircraft?

OMB CIRCULAR A–76

102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?
102–33.85 Where should we send our OMB Circular A–76 Cost-Comparison Studies?

THE PROCESS FOR BUDGETING TO ACQUIRE GOVERNMENT AIRCRAFT

102–33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?
102–33.95 What is the process for budgeting to acquire commercial aviation services (CAS)?

CONTRACTING TO ACQUIRE GOVERNMENT AIRCRAFT

102–33.100 What are our responsibilities when contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract?
102–33.105 What special requirements must we put into our CAS contracts?

ACQUIRING AIRCRAFT PARTS

102–33.110 What are our responsibilities when acquiring aircraft parts?
102–33.115 Are there special requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?
102–33.120 Are there special requirements for acquiring life-limited parts?

Subpart C—Managing Government Aircraft and Aircraft Parts

OVERVIEW

102–33.125 If we use Federal aircraft, what are our management responsibilities?
102–33.130 If we hire CAS, what are our management responsibilities?
102–33.135 Do we have to follow the direction in OMB Circular A–123, ''Management Accountability and Control,'' June 21, 1995, for establishing management controls for our aviation program?

ESTABLISHING FLIGHT PROGRAM STANDARDS

102–33.140 What are Flight Program Standards?
102–33.145 Why must we establish Flight Program Standards?
102–33.150 Is any agency exempt from establishing Flight Program Standards under this part?
102–33.155 How must we establish Flight Program Standards?

MANAGEMENT/ADMINISTRATION

102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

OPERATIONS

102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

MAINTENANCE

102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

TRAINING

102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

SAFETY

102–33.180 What standards must we establish or require (contractually, where applicable) for flight program safety?

102–33.185 What standards must we establish or require (contractually, where applicable) for responding to aircraft accidents and incidents?

ACCOUNTING FOR THE COST OF GOVERNMENT AIRCRAFT

102–33.190 What are the aircraft operations and ownership costs for which we must account?

102–33.195 Do we need an automated system to account for aircraft costs?

102–33.200 Must we periodically justify owning and operating Federal aircraft?

102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

ACCOUNTING FOR THE USE OF GOVERNMENT AIRCRAFT

102–33.210 How do we account for the use of our Government aircraft?

102–33.215 May we use Government aircraft to carry passengers?

102–33.220 What are the responsibilities of an agency's aviation program in justifying the use of a Government aircraft to transport passengers?

MANAGING AIRCRAFT PARTS

102–33.225 How must we manage aircraft parts?

102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?

102–33.235 What documentation must we maintain for life-limited parts and FSCAP?

Subpart D—Disposing of Government Aircraft and Aircraft Parts

OVERVIEW

102–33.240 What must we consider before disposing of aircraft and aircraft parts?

102–33.245 May we report as excess, or replace (i.e., by exchange/sale), both operational and non-operational aircraft?

102–33.250 May we report as excess, or replace, declassified aircraft?

102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?

102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

REPORTING EXCESS GOVERNMENT AIRCRAFT

102–33.265 What are our options if aircraft are excess to our needs?

102–33.270 What is the process for reporting an excess aircraft?

REPLACING AIRCRAFT THROUGH EXCHANGE OR SALE

102–33.275 Are there restrictions on replacing aircraft by exchange or sale?

102–33.280 What are our options if we need a replacement aircraft?

102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for uncertificated aircraft or aircraft that we have operated as public aircraft (i.e., not in compliance with the Federal Aviation Regulations, 14 CFR chapter I)?

102–33.290 What other disclaimers must we include in our exchange/sale agreements for aircraft?

102–33.295 May we exchange or sell an aircraft through reimbursable transfer to another executive agency?

DISPOSING OF AIRCRAFT PARTS

102–33.300 What must we consider before disposing of aircraft parts?

102–33.305 May we report as excess, or replace, FSCAP and life-limited parts?

102–33.310 May we report as excess, or replace, unsalvageable aircraft parts?

102–33.315 What are the procedures for mutilating unsalvageable aircraft parts?

102–33.320 What must we do if we are unable to perform required mutilation of aircraft parts?

102–33.325 What documentation must we furnish with excess/surplus or replaced parts when they are transferred, donated, exchanged, or sold?

REPORTING EXCESS AIRCRAFT PARTS

102–33.330 What must we do with aircraft parts that are excess to our needs?
102–33.335 What are the receiving agency's responsibilities in the transfer or donation of aircraft parts?
102–33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?
102–33.345 What are a State agency's responsibilities in the donation of Federal Government aircraft parts?

REPLACING AIRCRAFT PARTS THROUGH EXCHANGE OR SALE

102–33.350 Do we need approval from GSA to replace aircraft parts by exchange or sale?
102–33.355 May we do a reimbursable transfer of parts with another executive agency?
102–33.360 What is the process for selling or exchanging aircraft parts for replacement?
102–33.365 Must we report exchange or sale of parts to FAIRS?

SPECIAL REQUIREMENTS FOR DISPOSING OF FLIGHT SAFETY CRITICAL AIRCRAFT PARTS (FSCAP) AND LIFE-LIMITED PARTS

102–33.370 What must we do to dispose of military FSCAP or life-limited parts?
102–33.375 What is a FSCAP Criticality Code?

Subpart E—Reporting Information on Government Aircraft

OVERVIEW

102–33.380 Who must report information to GSA on Government aircraft?
102–33.385 Is any civilian executive agency exempt from the requirement to report information to GSA on Government aircraft?
102–33.390 What information must we report on Government aircraft?

FEDERAL AVIATION INTERACTIVE REPORTING SYSTEM (FAIRS)

102–33.395 What is FAIRS?
102–33.400 How must we report to FAIRS?
102–33.405 When must we report to FAIRS?

FEDERAL INVENTORY DATA

102–33.410 What are Federal inventory data?
102–33.415 When may we declassify an aircraft and remove it from our Federal aircraft inventory?
102–33.420 How must we declassify an aircraft?

FEDERAL AIRCRAFT COST AND UTILIZATION DATA

102–33.425 What Federal aircraft cost and utilization data must we report?
102–33.430 Who must report Federal aircraft cost and utilization data?

COMMERCIAL AVIATION SERVICES (CAS) COST AND UTILIZATION DATA

102–33.435 What CAS cost and utilization data must we report?
102–33.440 Who must report CAS cost and utilization data?

ACCIDENT AND INCIDENT DATA

102–33.445 What accident and incident data must we report?
102–33.450 How must we report accident and incident data?

COMMON AVIATION MANAGEMENT INFORMATION STANDARD (C-AMIS)

102–33.455 What is C-AMIS?
102–33.460 What is our responsibility in relation to C-AMIS?

AUTHORITY: 40 U.S.C. 121(c); 31 U.S.C. 101 *et seq.;* Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1066–1970 Comp., p. 1070; Executive Order 11541, 35 FR 10737, 3 CFR, 1966–1970 Comp., p. 939; and OMB Circular No. A–126 (Revised May 22, 1992), 57 FR 22150.

SOURCE: 67 FR 67743, Nov. 6, 2002, unless otherwise noted.

Subpart A—How These Rules Apply

GENERAL

§ 102–33.5 To whom do these rules apply?

The rules in this part apply to all federally funded aviation activities of executive agencies of the U.S. Government, except those listed in paragraphs (a), (b), (c), and (d) of this section, who use Government aircraft to accomplish their official business.

(a) The Armed Forces are exempt from all but—

(1) Section 102–33.25(e) and (g), which concern responsibilities related to the Interagency Committee for Aviation Policy (ICAP); and

(2) Subpart D of this part.

(b) The President or Vice President and their offices are exempt.

(c) When an executive agency provides Government-furnished avionics for commercially owned or privately

owned aircraft for the purpose of technology demonstration or testing, those aircraft are exempt.

(d) Privately owned aircraft that agency personnel use for official travel (even though such use is federally funded) are exempt.

§ 102–33.10 May we request approval to deviate from these rules?

Yes, see §§ 102–2.60 through 102–2.110 of subchapter A of this chapter for guidance on requesting a deviation from the requirements in this part. GSA may not grant deviations from the requirements in OMB Circular A–126, ''Improving the Management of Government Aircraft,'' revised May 22, 1992. You should consult with GSA's Aircraft Management Policy Division (MTA) before you request a deviation. Also, you should fax a copy of your letter of request to MTA at 202–501–6742 at the same time you mail it to GSA's Regulatory Secretariat (see § 102–2.90 of subchapter A of this chapter). In most cases, GSA will respond to your written request within 30 days.

§ 102–33.15 How does this part relate to the Federal Aviation Regulations?

This part does not supersede any of the regulations in 14 CFR chapter I (Federal Aviation Regulations).

§ 102–33.20 What definitions apply to this part?

The following definitions apply to this part:

Acquisition date means the date that the acquiring executive agency took responsibility for the aircraft, e.g., received title (through purchase, exchange, or gift), signed a bailment agreement with the Department of Defense (DOD), took physical custody (in the case of reassignment or interagency transfer), received a court order (in the case of forfeiture), put into operational status an aircraft that is newly manufactured by the agency, or otherwise accepted physical transfer (for example, in the case of a borrowed aircraft).

Aircraft Management Policy Division (MTA) is a division in the Office of Transportation and Personal Property, Office of Governmentwide Policy, GSA. Contact MTA staff at 1800 F Street, NW., Washington, DC 20405, Room 1221; (202) 501–4866; fax (202) 501–6742; Web site at *http://www.gsa.gov/aircraftpolicy*.

Aircraft part means an individual component or an assembly of components that is primarily designated for and used on aircraft.

Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard, including their regular and Reserve components and members serving without component status. For purposes of this part, the National Guard is also included in the Armed Forces.

Aviation life support equipment (ALSE) means equipment that protects flight crewmembers and others aboard an aircraft, assisting their safe escape, survival, and recovery during an accident or other emergency.

Bailed aircraft means a Federal aircraft that is owned by one executive agency, but is in the custody of and operated by another executive agency under an agreement that may or may not include cost-reimbursement. Bailments are executive agency-to-executive agency agreements and involve only aircraft, not services.

Borrowed aircraft means an aircraft owned by a non-executive agency and provided to an executive agency for use without compensation. The executive agency operates and maintains the aircraft.

Chartered aircraft means an aircraft that an executive agency hires commercially under a contractual agreement specifying performance and one-time exclusive use. The commercial source operates and maintains a charter aircraft. A charter is one form of a full service contract.

Commercial aviation services (CAS) include—

(1) Leasing aircraft for exclusive use or lease-purchasing an aircraft with the intent of taking title;

(2) Chartering or renting aircraft for exclusive use;

(3) Contracting for full services (i.e., aircraft and related aviation services for exclusive use) or obtaining full services through an inter-service support agreement (ISSA); or

(4) Obtaining related aviation services (i.e., services but not aircraft) by commercial contract or ISSA, except

those services acquired to support a Federal aircraft.

Crewmember means a person assigned to operate or assist in operating an aircraft during flight time. Crewmembers perform duties directly related to the operation of the aircraft (e.g., as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (e.g., as flight directors, crew chiefs, electronics technicians, mechanics). For related terms, see *Qualified non-crewmember* and *Passenger* elsewhere in this section.

Criticality code means a single digit code that DOD assigns to military Flight Safety Critical Aircraft Parts (FSCAP) (see § 102–33.370).

Data plate means a fireproof plate that is inscribed with certain information required by the Federal Aviation Regulations (14 CFR part 45) and secured to an aircraft, aircraft engine, propeller, or propeller blade. The information must be marked by etching, stamping, engraving, or other approved method of fireproof marking. The plate must be attached in such a manner that it is not likely to be defaced or removed during normal service or lost or destroyed in an accident. Data plates are required only on certificated aircraft; however, uncertificated aircraft may also have data plates.

Declassify means to remove a non-operational aircraft from the Federal aircraft inventory. Agencies may declassify only non-operational aircraft that they will retain for ground use only. Agencies must declassify an aircraft following the rules in §§ 102–33.415 and 102–33.420.

Disposal date means the date that the disposing executive agency relinquishes responsibility for an aircraft, for example, when the agency transfers title in the case of a sale or exchange; returns the aircraft to the lessor or bailer; declassifies it (for FAIRS, declassification is considered a ''disposal'' action, even though the agency retains the property); or relinquishes custody to another agency (i.e., in the case of excess (transferred) or surplus (donated or sold) aircraft).

Donated aircraft means an aircraft disposed of as surplus by GSA through donation to a non-federal government, a tax-exempt nonprofit entity, or other eligible recipient, following the rules in part 102–37 of this subchapter. (Some agencies, for example DOD, may have independent donation authority.)

Exclusive use means a condition under which—

(1) An aircraft is operated for the sole benefit of the U.S. Government; and

(2) The executive agency using the aircraft has operational control of the aircraft and the authority to define departure times, origins and destinations of flights, and payloads, passengers, and cargo.

Executive agency means any executive department or independent establishment in the executive branch of the United States Government, including any wholly owned Government corporation. See 40 U.S.C. 472(a).

Federal Acquisition Regulation (48 CFR chapter 1, parts 1 through 53) is a codified regulation of the U.S. Government that provides uniform policies and procedures for acquisition of personal property and services by executive agencies.

Federal aircraft means an aircraft that an executive agency owns (i.e., holds title to) or borrows for any length of time. When an executive agency loans or bails an aircraft that meets the criteria for Federal aircraft, that loaned or bailed aircraft is still considered a Federal aircraft in the owning agency's inventory except when DOD is the owning agency of a bailed aircraft. In that case, the aircraft is recorded in the inventory of the bailee.

Federal Aviation Interactive Reporting System (FAIRS). (See §§ 102–33.395 through 102–33.440.)

Federal Aviation Regulation (14 CFR chapter I) is a codified publication of the U.S. Government that describes uniform policies and procedures for regulating aviation within the national airspace system.

Federal Supply Service (FSS) is a component of GSA. FSS is organized by geographical regions. The FSS Property Management Division in GSA's Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102–3434, (415) 522–3029, has responsibility for disposing of excess and surplus aircraft.

Federal Travel Regulation (FTR) (41 CFR chapters 300–304) is a codified publication of the U.S. Government that

describes uniform policies and procedures for managing travel of the executive agencies.

Flight Safety Critical Aircraft Part (FSCAP) means any military aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shutdown resulting in an unsafe condition.

Forfeited aircraft means an aircraft acquired by the Government either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States.

Full service contract means a contractual agreement through which an executive agency acquires an aircraft and related aviation services (for example, pilot, crew, maintenance, catering) for exclusive use. Aircraft hired under full service contracts are commercial aviation services (CAS), not Federal aircraft, regardless of the length of the contract.

Government aircraft means an aircraft that is operated for the exclusive use of an executive agency and is a—

(1) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(2) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(i) Leases or lease-purchases with the intent to take title;

(ii) Charters or rents; or

(iii) Hires as part of a full service contract or an inter-service support agreement (ISSA).

Government Aircraft Cost Accounting Guide (CAG) means guidance published by GSA based on the cost elements defined in Attachments A and B to OMB Circular A–126 and in OMB Circular A–76, FAIRS, and the U.S. Government Standard General Ledger to account for Government aircraft costs.

Governmental function means a federally funded activity that an executive agency performs in compliance with its statutory authorities.

Intelligence agencies mean the following agencies or organizations within the U.S. intelligence community:

(1) Central Intelligence Agency.

(2) National Security Agency.

(3) Defense Intelligence Agency.

(4) National Reconnaissance Office.

(5) The Bureau of Intelligence and Research of the Department of State.

(6) Intelligence elements of the Army, Navy, Air Force, Marine Corps, Department of Justice, Department of the Treasury, and Department of Energy.

Inter-service support agreement (ISSA) means any agreement between two or more executive agencies (including the Department of Defense) in which one agency consents to perform aviation support services (i.e., providing an aircraft and other aviation services or providing only services) for another agency with or without cost-reimbursement. An executive agency-to-executive agency agreement that involves only the use of an aircraft, not services, is a bailment, not an ISSA.

Leased aircraft means an aircraft hired under a commercial contractual agreement in which an executive agency has exclusive use of the aircraft for an agreed upon period of time. The acquiring executive agency operates and maintains the aircraft. Leased aircraft are hired as commercial aviation services (CAS).

Lease-purchase aircraft means a leased aircraft for which the leasing executive agency holds an option to purchase.

Life-limited part means any aircraft part that has an established replacement time, inspection interval, or other time-related procedure associated with it. For non-military parts, FAA specifies life-limited parts' airworthiness limitations in 14 CFR chapter I, §§ 21.50, 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.5, and on product Type Certificate Data Sheets (TCDS) for products certified before airworthiness limitations were added to 14 CFR chapter I. Letters authorizing Technical Standards Orders (TSO) must also note or reference mandatory replacement or inspection of parts.

Loaned aircraft means a Federal aircraft owned by an executive agency, but in the custody of a non-executive agency under an agreement that does not include compensation.

Military aircraft part means an aircraft part used on an uncertificated aircraft that was developed for the Armed Forces.

Non-operational aircraft means a Federal aircraft that is not safe for flight and, in the owning executive agency's determination, cannot economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support equipment capability. An aircraft that is temporarily out of service for maintenance or repair and can economically be made safe for flight is considered operational.

Official Government business, in relation to Government aircraft—

(1) Includes, but is not limited to—

(i) Carrying crewmembers, qualified non-crewmembers, and cargo directly required for or associated with performing Governmental functions (including travel-related Governmental functions);

(ii) Carrying passengers authorized to travel on Government aircraft (see OMB Circular A–126); and

(iii) Training pilots and other aviation personnel.

(2) Does not include—

(i) Using Government aircraft for personal or political purposes, except for required use travel and space available travel as defined in OMB Circular A–126; or

(ii) Carrying passengers who are not officially authorized to travel on Government aircraft.

Operational aircraft means a Federal aircraft that is safe for flight or, in the owning executive agency's determination, can economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support capability. An aircraft temporarily out of service for maintenance or repair is considered operational.

Original equipment manufacturer means the person or company who originally designed, engineered, and manufactured, or who currently holds the data rights to manufacture, a specific aircraft or aircraft part.

Owned aircraft means an aircraft for which title or rights of title are vested in an executive agency. Owned aircraft are considered Federal aircraft.

Passenger means a person flying onboard a Government aircraft who is officially authorized to travel and who is not a crewmember or qualified non-crewmember.

Production approval holder means the person or company who holds a Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standards Order (TSO) authorization, issued under provisions of 14 CFR part 21, Certification Procedures for Products and Parts, and who controls the design and quality of a specific aircraft part.

Qualified non-crewmember means a person flying onboard a Government aircraft whose skills or expertise are required to perform or are associated with performing the Governmental function for which the aircraft is being operated (qualified non-crewmembers may be researchers, law enforcement agents, fire fighters, agricultural engineers, biologists, etc.). *Qualified non-crewmembers* are not passengers.

Registration mark means the unique identification mark that is assigned by the Federal Aviation Administration and displayed on Government aircraft (including foreign aircraft hired as CAS). *Tail number* is commonly used for *registration mark*.

Related aviation services contract means a commercial contractual agreement through which an executive agency hires aviation services only (not aircraft), e.g., pilot, crew, maintenance, cleaning, dispatching, or catering.

Rental aircraft means an aircraft hired commercially under an agreement in which the executive agency has exclusive use of the aircraft for an agreed upon period of time. The executive agency operates, but does not maintain, a rental aircraft.

Required use means use of a Government aircraft for the travel of an executive agency officer or employee to meet bona fide communications or security needs of the agency or to meet exceptional scheduling requirements. Required use travel must be approved as described in OMB Circular A–126.

Risk analysis and management means a systematic process for—

(1) Identifying risks associated with alternative courses of action involved in an aviation operation; and

(2) Choosing from among these alternatives the course(s) of action that will promote optimum aviation safety.

Safe for flight means approved for flight and refers to an aircraft, aircraft engine, propeller, appliance, or part that has been inspected and certified to meet the requirements of applicable regulations, specifications, or standards. When applied to an aircraft that an executive agency operates under the Federal Aviation Regulations (14 CFR chapter I), safe for flight means ''airworthy,'' i.e., the aircraft or related parts meet their type designs and are in a condition, relative to wear and deterioration, for safe operation. When applied to an aircraft that an executive agency uses, but does not operate or require to be operated under the Federal Aviation Regulations, safe for flight means a state of compliance with military specifications or the executive agency's own Flight Program Standards, and as approved, inspected, and certified by the agency.

Senior Aviation Management Official means the person in an executive agency who will be the agency's primary member of the Interagency Committee for Aviation Policy (ICAP). This person must be of appropriate grade and position to represent the agency and promote flight safety and adherence to standards.

Serviceable aircraft part means a part that is safe for flight, can fulfill its operational requirements, and is sufficiently documented to indicate that the part conforms to applicable standards/specifications.

Suspected unapproved part means a non-military aircraft part, component, or material that any person suspects of not meeting the requirements of an ''approved part.'' Approved parts are those that are produced in compliance with the Federal Aviation Regulations (14 CFR part 21), are maintained in compliance with 14 CFR parts 43 and 91, and meet applicable design standards. A part, component, or material may be suspect because of its questionable finish, size, or color; improper (or lack of) identification; incomplete or altered paperwork; or any other questionable indication. See detailed guidance in FAA Advisory Circular 21–29, ''Detecting and Reporting Suspected Unapproved Parts,'' available from FAA at *http://www.faa.gov*.

Tail number (See *registration mark*).

Traceable part means an aircraft part whose original equipment manufacturer or production approval holder can be identified by documentation, markings/characteristics on the part, or packaging of the part. Non-military parts are traceable if you can establish that the parts were manufactured under rules in 14 CFR part 21 or were previously determined to be airworthy under rules in 14 CFR part 43. Possible sources for making a traceability determination could be shipping tickets, bar codes, invoices, parts marking (e.g., PMA, TSO), data plates, serial/part numbers, manufacturing production numbers, maintenance records, work orders, etc.

Training means instruction for flight program personnel to enable them to qualify initially for their positions and to maintain qualification for their positions over time.

Travel Management Policy Division (MTT) means GSA's Office of Transportation and Personal Property, Office of Governmentwide Policy. MTT is responsible for publishing the Federal Travel Regulation (41 CFR chapters 300 through 304), which contains policy for management of travel of U.S. Government personnel and certain others. Contact the MTT staff at 1800 F Street, NW., Washington, DC 20405, Room G–219; (202) 501–1538; see their Web site at *http://www.gsa.gov/travelpolicy*.

Unsalvageable aircraft part means an aircraft part that cannot be restored to a condition that is safe for flight because of its age, its physical condition, a non-repairable defect, insufficient documentation, or its non-conformance with applicable standards/specifications.

RESPONSIBILITIES

§ 102–33.25 What are our responsibilities under this part?

Under this part, your responsibilities are to—

(a) Acquire, manage, and dispose of Government aircraft (i.e., Federal aircraft and commercial aviation services

(CAS); see § 102–33.45) as safely, efficiently, and effectively as possible consistent with the nature of your agency's aviation missions;

(b) Document and report the—

(1) Types and numbers of your Federal aircraft;

(2) Costs of acquiring and operating Government aircraft;

(3) Amount of time that your agency uses Government aircraft; and

(4) Accidents and incidents involving Government aircraft;

(c) Ensure that your Government aircraft are used only to accomplish your agency's official Government business;

(d) Ensure that all passengers traveling on your agency's Government aircraft are authorized to travel on such aircraft (see OMB Circular A–126);

(e) Appoint (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) a Senior Aviation Management Official (SAMO), who will be your agency's primary member of the Interagency Committee for Aviation Policy (ICAP) (this paragraph (e) applies to all executive agencies that use aircraft, including the Department of Defense (DOD), the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB);

(f) Designate an official (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) to certify the accuracy and completeness of information reported by your agency through the Federal Aviation Interactive Reporting System (FAIRS) (this official may be the SAMO or may be another individual who has the appropriate authority). (Armed Forces agencies, which include DOD and the U.S. Coast Guard, are not required to report information to FAIRS.);

(g) Appoint representatives of the agency as members of ICAP subcommittees and working groups; and

(h) Ensure that your agency's internal policies and procedures are consistent with the requirements of OMB Circulars A–126 and A–76 and this part.

§ 102–33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?

The SAMO's duties are to—

(a) Represent the agency's views to the ICAP and vote on behalf of the agency as needed; contribute technical and operational policy expertise to ICAP deliberations and activities; and serve as the designated approving official for FAIRS when the agency elects to have one person serve as both the SAMO and the designated official for FAIRS (DOD will not have a designated official for FAIRS); and

(b) Appoint representatives of the agency as members of ICAP subcommittees and working groups.

§ 102–33.35 How can we get help in carrying out our responsibilities?

To get help in carrying out your responsibilities under this part, you may—

(a) Call or write to GSA's Aircraft Management Policy Division (MTA) (see § 102–33.20); or

(b) Find more information on the Internet from the following Web sites:

(1) *http://www.gsa.gov/aircraftpolicy* (GSA Aircraft Management Policy Division).

(2) *http://www.gsa.gov/travelpolicy* (GSA Travel Management Policy Division).

§ 102–33.40 What are GSA's responsibilities for Federal aviation management?

Under OMB Circular A–126, ''Improving the Management and Use of Government Aircraft,'' revised May 22, 1992 (available from *http://www.whitehouse.gov/omb*), GSA's chief responsibilities for Federal aviation management are to maintain—

(a) A single office (i.e., MTA) for developing policy for improving the management of Federal aviation, including acquisition, operation, safety, and disposal of Government aircraft, and publishing that policy;

(b) An interagency committee (i.e., the ICAP), whose members represent the executive agencies that use Government aircraft to conduct their official business (including FAA and NTSB specifically) and advise GSA on developing policy for managing Government aircraft; and

(c) A management information system to collect, analyze, and report information on the inventory, cost,

usage, and safety of Government aircraft.

NOTE TO § 102–33.40: See OMB Circular A–126 for a complete listing of GSA's responsibilities related to Federal aviation.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

OVERVIEW

§ 102–33.45 What is a Government aircraft?

A Government aircraft is one that is operated for the exclusive use of an executive agency and is a—

(a) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(b) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(1) Leases or lease-purchases with the intent to take title;

(2) Charters or rents; or

(3) Hires as part of a full service contract or an inter-service support agreement (ISSA).

§ 102–33.50 Under what circumstances may we acquire Government aircraft?

Your agency may acquire Government aircraft when you meet the requirements for operating an in-house aviation program contained in OMB Circular A–76, ''Performance of Commercial Activities,'' August 4, 1983 (available from *http://www.whitehouse.gov/omb)*, and when—

(a) For Federal aircraft—

(1) Aircraft are the optimum means of supporting your agency's official business;

(2) You do not have aircraft that can support your agency's official business safely (i.e., in compliance with applicable safety standards and regulations) and cost-effectively;

(3) No commercial or other Governmental source is available to provide aviation services safely (i.e., in compliance with applicable safety standards and regulations) and cost-effectively; and

(4) Congress has specifically authorized your agency to purchase, lease, or transfer aircraft and to maintain and operate those aircraft (see 31 U.S.C. 1343).

(b) For commercial aviation services (CAS)—

(1) Aircraft are the optimum means of supporting your agency's official business; and

(2) Using commercial aircraft and services is safe (i.e., conforms to applicable laws, safety standards, and regulations) and is more cost effective than using Federal aircraft, aircraft from any other Governmental source, or scheduled air carriers.

§ 102–33.55 Are there restrictions on acquiring Government aircraft?

Yes, you may not acquire—

(a) More aircraft than you need to carry out your official business;

(b) Aircraft of greater size or capacity than you need to perform your Governmental functions cost-effectively; or

(c) Federal aircraft that Congress has not authorized your agency to acquire or Federal aircraft or commercial aircraft and services for which you have not followed the requirements in OMB Circular A–76.

§ 102–33.60 What methods may we use to acquire Government aircraft?

Following the requirements of §§ 102–33.50 and 102–33.55, you (or an internal bureau or sub-agency within your agency) may acquire Government aircraft by means including, but not limited to—

(a) Purchase;

(b) Borrowing from a non-federal source;

(c) Bailment from another executive agency;

(d) Exchange/sale (but only with approval from GSA; see § 102–33.275);

(e) Reimbursable transfer from another executive agency (see §§ 102–36.75 through 102–36.85 of this subchapter B);

(f) Transfer from another executive agency as approved by GSA;

(g) Reassignment from one internal bureau or subagency to another within your agency;

(h) Forfeiture (you must have specific authority to seize aircraft);

(i) Insurance replacement (i.e., receiving a replacement aircraft);

(j) Lease or lease-purchase;

(k) Rent or charter;

(l) Contract for full services (i.e., aircraft plus crew and related aviation services) from a commercial source; or

(m) Inter-service support agreements with other executive agencies for aircraft and services.

§ 102–33.65 What is the process for acquiring Government aircraft?

Acquiring aircraft generally follows a three-step process; planning, budgeting, and contracting, as described in §§ 102–33.70 through 102–33.105.

PLANNING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102–33.70 What directives must we follow when planning to acquire Government aircraft?

When planning to acquire aircraft, you must follow the requirements in—

(a) 31 U.S. Code Section 1343, ''Buying and Leasing Passenger Motor Vehicles and Aircraft'';

(b) OMB Circular A–126, ''Improving the Management and Use of Government Aircraft,'' revised May 22, 1992;

(c) OMB Circular A–11, Part 7, ''Planning, Budgeting, Acquisition, and Management of Capital Assets,'' revised June 2002;

(d) OMB Circular A–76, ''Performance of Commercial Activities,'' revised June 14, 1999; and

(e) OMB Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' revised January 22, 2002.

NOTE TO § 102–33.70: OMB Circulars are available from *http://www.whitehouse.gov/omb*.

§ 102–33.75 What other guidance is available to us in planning to acquire Government aircraft?

You can find guidance for acquisition planning in the ''ICAP Fleet Modernization Planning Guide,'' which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, and in OMB's ''Capital Programming Guide,'' which is a supplement to OMB Circular A–11.

OMB CIRCULAR A–76

§ 102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?

Yes, before you acquire Government aircraft, you must comply with OMB Circular A–76 to assure that the private sector cannot provide Government aircraft or related aviation services more cost-effectively than you can provide Federal aircraft and related services (see particularly the Circular's Revised Supplemental Handbook's Appendix 6, Aviation Competitions).

§ 102–33.85 Where should we send our OMB Circular A–76 Cost-Comparison Studies?

You should forward copies of the completed A–76 Cost-Comparison studies to OMB upon request or as required by OMB Circular A–11 to justify aircraft purchases and to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, upon completion of a study.

THE PROCESS FOR BUDGETING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102–33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?

(a) The process for budgeting to acquire a Federal aircraft or to accept a Federal aircraft transferred from another executive agency requires that you have specific authority from Congress in your appropriation, as called for in 31 U.S.C. 1343, to—

(1) Purchase, lease-purchase, or lease a Federal aircraft and to operate and maintain it; or

(2) Accept a Federal aircraft transferred from another executive agency and to operate and maintain it.

(b) For complete information on budgeting to own Government aircraft (i.e., large purchase of a capital asset), see OMB Circular A–11, Part 7, and the ''Capital Programming Guide,'' Supplement to Part 7, Appendix 7.

§ 102–33.95 What is the process for budgeting to acquire commercial aviation services (CAS)?

Except for leases and lease-purchases, for which you must have specific Congressional authorization as required under 31 U.S.C. 1343, you may budget to fund your commercial aviation services (CAS) hires out of your agency's operating budget.

CONTRACTING TO ACQUIRE GOVERNMENT AIRCRAFT

§ 102–33.100 What are our responsibilities when contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract?

In contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract, you must follow the Federal Acquisition Regulation (48 CFR chapter 1) unless your agency is exempt from following the Federal Acquisition Regulation.

§ 102–33.105 What special requirements must we put into our CAS contracts?

At a minimum, your contracts and agreements must require that any provider of CAS comply with—

(a) Civil standards in the Federal Aviation Regulations (14 CFR chapter I) applicable to the type of operations you are asking the contractor to conduct;

(b) Applicable military standards; or

(c) Your agency's Flight Program Standards (see §§ 102–33.140 through 102–33.185 for the requirements for Flight Program Standards).

ACQUIRING AIRCRAFT PARTS

§ 102–33.110 What are our responsibilities when acquiring aircraft parts?

When acquiring aircraft parts, you must do the following:

(a) Acquire the parts cost-effectively and acquire only what you need.

(b) Inspect and test (as appropriate) all incoming parts and ensure that they are documented as safe for flight before installing them.

(c) Obtain all logbooks and maintenance records (for guidance on maintaining records for non-military parts, see FAA Advisory Circular 43–9C, ''Maintenance Records,'' which is available from the Federal Aviation Administration (FAA)) at *http://www.faa.gov*.

(d) Plan for adequate storage and protection.

(e) Report all Suspected Unapproved Parts (SUP) to the FAA, SUP Program Office, AVR–20, 45005 Aviation Drive, Suite 214, Dulles, VA 20166–7541, by telephone at 703–661–0580, or by calling the FAA Aviation Safety Hotline at 800–255–1111.

§ 102–33.115 Are there special requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, when you acquire military Flight Safety Critical Aircraft Parts (FSCAP), you must—

(a) Accept a FSCAP only when it is documented or traceable to its original equipment manufacturer (a FSCAP's DOD FSCAP Criticality Code should be marked or tagged on the part or appear on its invoice/transfer document; see § 102–33.375 for further explanation of the FSCAP Criticality Codes); and

(b) Not install undocumented, but traceable FSCAP until you have the parts inspected and recertified by the original equipment manufacturer or FAA-approved production approval holder (see § 102–33.370 on FSCAP).

§ 102–33.120 Are there special requirements for acquiring life-limited parts?

Yes, when you acquire new or used life-limited parts, you must—

(a) Identify and inspect the parts, ensuring that they have civil or military-certified documentation (i.e., complete life histories); and

(b) Mutilate and dispose of any expired life-limited parts (see § 102–33.370 on handling life-limited parts).

Subpart C—Managing Government Aircraft and Aircraft Parts

OVERVIEW

§ 102–33.125 If we use Federal aircraft, what are our management responsibilities?

If you use Federal aircraft, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185;

(b) Accounting for the cost of acquiring, operating, and supporting your aircraft;

(c) Accounting for use of your aircraft;

(d) Maintaining and accounting for aircraft parts;

(e) Reporting inventory, cost, and utilization data (for reporting requirements, see subpart E of this part); and

(f) Properly disposing of aircraft and parts following this part and FMR subchapter B (41 CFR chapter 102, subchapter B).

§ 102–33.130 If we hire CAS, what are our management responsibilities?

If you hire CAS, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185, as applicable, and requiring compliance with these standards in your contracts and agreements;

(b) Accounting for the cost of your aircraft and services hired as CAS;

(c) Accounting for use of your aircraft hired as CAS; and

(d) Reporting the cost and usage data for your CAS hires (for reporting requirements, see subpart E of this part).

§ 102–33.135 Do we have to follow the direction in OMB Circular A–123, "Management Accountability and Control," June 21, 1995, for establishing management controls for our aviation program?

Yes, you must follow the direction in OMB Circular A–123, ''Management Accountability and Control,'' June 21, 1995, for establishing management controls for your aviation program. (See Note to § 102–33.70.) The circular requires that you establish organizations, policies, and procedures to ensure that, among other things, your aviation program achieves its intended results and you use your resources consistently with your agency's missions.

ESTABLISHING FLIGHT PROGRAM STANDARDS

§ 102–33.140 What are Flight Program Standards?

Flight Program Standards are standards specific to your agency's aviation operations, including your commercial aviation services (CAS) contracts. Your Flight Program Standards must meet the requirements in §§ 102–33.155 through 102–33.185, and they must meet or exceed applicable civil or military rules. When civil or military rules do not apply, you must use risk management techniques to develop Flight Program Standards specifically for your program. In your standards, you must address all aspects of your program, e.g., uncertificated aircraft, high-risk operations, special personnel requirements, that may not be addressed under the rules for civil aircraft in the Federal Aviation Regulations (14 CFR chapter I). The requirements for Flight Program Standards in §§ 102–33.155 through 102–33.185 incorporate and adapt the ICAP's ''Safety Standards Guidelines for Federal Flight Programs,'' revised December 22, 1999, and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.145 Why must we establish Flight Program Standards?

You must establish Flight Program Standards to ensure that aircraft your agency uses are operated safely, effectively, and efficiently.

§ 102–33.150 Is any agency exempt from establishing Flight Program Standards under this part?

Yes, in addition to the Armed Forces and intelligence agencies, entities outside the executive branch of the Federal Government are exempt from establishing Flight Program Standards when using aircraft loaned to them by an executive agency (that is, owned by an executive agency, but operated by and on behalf of the loanee) unless the loanee—

(a) Uses the aircraft to conduct official Government business; or

(b) Is required to follow §§ 102–33.140 through 102–33.185 under a Memorandum of Agreement governing the loan.

§ 102–33.155 How must we establish Flight Program Standards?

To establish Flight Program Standards, you must write, publish (as appropriate), implement, and comply with detailed, agency-specific standards, which establish or require (contractually, where applicable) policies and procedures for—

(a) Management/administration of your flight program (in this part, ''flight program'' includes CAS contracts);

(b) Operation of your flight program;

(c) Maintenance of your Government aircraft;

(d) Training for your flight program personnel; and

(e) Safety of your flight program.

MANAGEMENT/ADMINISTRATION

§ 102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

For management/administration of your flight program, you must establish or require (contractually, where applicable) the following:

(a) A management structure responsible for the administration, operation, safety, training, maintenance, and financial needs of your aviation operation (including establishing minimum requirements for these items for any commercial contracts).

(b) Guidance describing the roles, responsibilities, and authorities of your flight program personnel, e.g., managers, pilots and other crewmembers, flight safety personnel, maintenance personnel, and dispatchers.

(c) Procedures to record and track flight time, duty time, and training of crewmembers.

(d) Procedures to record and track duty time and training of maintenance personnel.

OPERATIONS

§ 102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

For operation of your flight program, you must establish or require (contractually, where applicable) the following:

(a) Basic qualifications and currency requirements for your pilots and other crewmembers, maintenance personnel, and other mission-related personnel.

(b) Limitations on duty time and flight time for pilots and other crewmembers.

(c) Compliance with owning-agency or military safety of flight notices and operational bulletins.

(d) Flight-following procedures to notify management and initiate search and rescue operations for lost or downed aircraft.

(e) Dissemination, as your agency determines appropriate, of a disclosure statement to all crewmembers and qualified non-crewmembers who fly aboard your agency's Government aircraft, as follows:

Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft

Generally, an aircraft used exclusively for the U.S. Government may be considered a ''public aircraft'' as defined in Public Law 106–181, provided it is not a Government-owned aircraft transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal Aviation Regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If an agency transports passengers on a Government-owned aircraft or uses that aircraft for commercial purposes, the agency must comply with all Federal Aviation Regulations applicable to civil aircraft. If you have any questions concerning whether a particular flight will be a public aircraft operation or a civil aircraft operation, you should contact the agency sponsor of that flight.

You have certain rights and benefits in the unlikely event you are injured or killed while working aboard a Government-owned or operated aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits

office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693–0044.

State or foreign laws may provide for product liability or ''third party'' causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while working or traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) and the U.S. Attorneys Office are authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to State programs for the benefit of victims of terrorist acts or mass violence.

If you are a Federal employee. If you are injured or killed on the job during the performance of duty, including while traveling or working aboard a Government aircraft or other Government-owned or operated conveyance for official Government business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

If you are a private citizen not employed by the Federal government. Even if the Federal government does not regularly employ you, if you are rendering personal service to the Federal government on a voluntary basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you board a Government aircraft, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

If the agency determines that you are not a ''Federal employee,'' you and your family will not be eligible to receive workers' compensation benefits under FECA. If you are onboard the aircraft for purposes of official Government business, you may be eligible for workman's compensation benefits under state law. If an accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

NOTE: This disclosure statement is not all-inclusive. You should contact your agency's personnel office, or if you are a private citizen, your agency sponsor or point-of-contact for further assistance.

(f) At the origin of each flight, creation of a manifest containing the full names of all persons on board for each leg of flight, a point of contact for each person, and phone numbers for the points of contact.

(g) Documentation of any changes in the manifest by leg, and retention of manifests for two years from the time of flight.

(h) Procedures for reconciling flight manifests with persons actually on board and a method to test those procedures periodically.

(i) At the origin of each flight, preparation of a complete weight and balance computation and a cargo-loading manifest, and retention of this computation and manifest for 30 days from the time of flight.

(j) Appropriate emergency procedures and equipment for specific missions.

(k) Procedures to ensure that required Aviation Life Support Equipment (ALSE) is inspected and serviceable.

MAINTENANCE

§ 102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

For maintenance of your Government aircraft, you must establish or require (contractually, where applicable) the following:

(a) Aircraft maintenance and inspection programs that comply with whichever is most applicable among—

(1) Programs for ex-military aircraft;

(2) Manufacturers' programs;

(3) FAA-approved programs (i.e., following the Federal Aviation Regulations);

(4) FAA-accepted programs (i.e., those following ICAP guides that have been accepted by the FAA); or

(5) Your agency's self-prescribed programs.

(b) Compliance with owning-agency or military safety of flight notices, FAA airworthiness directives, or mandatory manufacturers' bulletins applicable to the types of aircraft, engines, propellers, and appliances you operate.

(c) Procedures for operating aircraft with inoperable equipment.

(d) Technical support, including appropriate engineering documentation and testing, for aircraft, powerplant, propeller, or appliance repairs, modifications, or equipment installations.

(e) A quality control system for acquiring replacement parts, ensuring that the parts you acquire have the documentation needed to determine that they are safe for flight and are inspected and tested, as applicable.

(f) Procedures for recording and tracking maintenance actions; inspections; and the flight hours, cycles, and calendar times of life-limited parts and FSCAP.

TRAINING

§ 102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

You must establish or require (contractually, where applicable) an instructional program to train your flight program personnel, initially and on a recurrent basis, in their responsibilities and in the operational skills relevant to the types of operations that you conduct. See § 102–33.180(a) for specific requirements for safety manager training.

SAFETY

§ 102–33.180 What standards must we establish or require (contractually, where applicable) for flight program safety?

For flight program safety, you must establish or require (contractually, where applicable) the following:

(a) The appointment of qualified aviation safety managers (i.e., those individuals who are responsible for an agency's aviation safety program, regardless of title), who must be—

(1) Experienced as pilots or crewmembers or in aviation operations management/flight program management; and

(2) Graduated from an aviation safety officer course provided by a recognized training provider and authority in aviation safety before appointment or within one year after appointment.

(b) Risk analysis and risk management to identify and mitigate hazards and provide procedures for managing risk to an optimum level.

(c) Use of independent oversight and assessments (i.e., unbiased inspections) to verify compliance with the standards called for in this part.

(d) Procedures for reporting unsafe operations to senior aviation safety managers.

(e) A system to collect and report information on aircraft accidents and incidents (as required by 49 CFR part 830 and §§ 102–33.445 and 102–33.450).

(f) A program for preventing accidents, which includes—

(1) Measurable accident prevention procedures (e.g., pilot proficiency evaluations, fire drills, hazard analyses);

(2) A system for disseminating accident-prevention information;

(3) Safety training;

(4) An aviation safety awards program; and

(5) For Federal aircraft-owning agencies, a safety council.

§ 102–33.185 What standards must we establish or require (contractually, where applicable) for responding to aircraft accidents and incidents?

For responding to aircraft accidents and incidents, you must establish or require (contractually, where applicable) the following:

(a) An aircraft accident/incident reporting capability to ensure that you will comply with the NTSB's regulations (in 49 CFR parts 830 and 831), including notifying NTSB immediately when you have an aircraft accident or an incident as defined in 49 CFR 830.5.

(b) An accident/incident response plan, modeled on the NTSB's ''Federal Plan for Aviation Accidents Involving Aircraft Operated by or Chartered by Federal Agencies,'' and periodic disaster response exercises to test your plan. You can see a copy of the NTSB's plan on the Web at *http://www.ntsb.gov/publictn/1999/SPC9904.pdf* or htm.

(c) Procedures (see 49 CFR 831.11) for participating as a party in NTSB's investigations of accidents or incidents involving aircraft that your agency owns or hires and for conducting parallel investigations, as appropriate.

(d) Training in investigating accidents/incidents for your agency's personnel who may be asked to participate in NTSB investigations.

(e) Procedures for disseminating, in the event of an aviation disaster that involves one of your Government aircraft, information about eligibility for benefits that is contained in the disclosure statement in § 102–33.165(e) to anyone injured, to injured or deceased persons' points of contact (listed on the manifest), and to the families of injured or deceased crewmembers and qualified non-crewmembers.

NOTE TO § 102–33.185: This part does not supersede any of the regulations in 49 CFR part 830 or part 831. For definitions of terms and complete regulatory guidance on notifying NTSB and reporting aircraft accidents and incidents, see 49 CFR parts 830 and 831.

ACCOUNTING FOR THE COST OF GOVERNMENT AIRCRAFT

§ 102–33.190 What are the aircraft operations and ownership costs for which we must account?

You must account for the operations and ownership costs of your Government aircraft as described in the ''Government Aircraft Cost Accounting Guide'' (CAG), which follows OMB Circular A–126 and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.195 Do we need an automated system to account for aircraft costs?

If you own Federal aircraft or operate bailed Federal aircraft, you must maintain an automated system to account for aircraft costs by collecting the cost data elements required by the Federal Aviation Interactive Reporting System (FAIRS). The functional specifications and data definitions for a FAIRS-compliant system are described in the ''Common Aviation Management Information Standard'' (C-AMIS), which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405. See §§ 102–33.395 and 102–33.460 for more information on FAIRS and C-AMIS. Agencies who use only CAS aircraft and do not have Federal aircraft must keep records adequate for reporting information through FAIRS, but are not required to have an automated system (see §§ 102–33.435 and 102–33.440 for the information on CAS that you must report through FAIRS).

§ 102–33.200 Must we periodically justify owning and operating Federal aircraft?

Yes, after you have held a Federal aircraft for five years, you must justify owning and operating the aircraft by reviewing your operations and establishing that you have a continuing need for the aircraft, as required in OMB Circular A–76. You must also establish the cost-effectiveness of all your aircraft operations following OMB-approved cost justification methodologies, which are described in OMB Circular A–76 every five years.

§ 102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

(a) Under 31 U.S.C. 1535 and other statutes, you may be required to recover the costs of operating aircraft in support of other agencies. Depending on the statutory authorities under

which you acquired and operate your aircraft, you will use either of two methods for establishing the rates charged for using your aircraft:

(1) The variable cost recovery rate; or

(2) The full cost recovery rate.

(b) See the Government Aircraft CAG, which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for definitions of these terms.

ACCOUNTING FOR THE USE OF GOVERNMENT AIRCRAFT

§ 102–33.210 How do we account for the use of our Government aircraft?

To account for the use of Government aircraft, you must document all flights and keep this documentation for two years after the date of the flight. For each flight, record the—

(a) Aircraft's registration mark;

(b) Owner and operator (e.g., the owner may not be the operator, as is the case when a CAS aircraft, owned commercially, is operated by U.S. Government personnel);

(c) Purpose of the flight (i.e., the Governmental function that the aircraft was dispatched to perform);

(d) Departure and destination points;

(e) Flight date(s) and times;

(f) A manifest (see §§ 102–33.165(g) and (h)); and

(g) Name(s) of the pilot(s) and crewmembers.

§ 102–33.215 May we use Government aircraft to carry passengers?

Yes, you may use Government aircraft to carry passengers with the following restrictions:

(a) You may carry passengers only on aircraft that you operate or require contractually to be operated according to the rules and requirements in Federal Aviation Regulations (14 CFR chapter I).

(b) For certain kinds of travel, your agency must justify passengers' presence on Government aircraft (see OMB Circular A–126 and the Government Aircraft Cost Accounting Guide (CAG) published by GSA for complete information on authorizing travel and analyzing costs before authorizing travel on Government aircraft).

§ 102–33.220 What are the responsibilities of an agency's aviation program in justifying the use of a Government aircraft to transport passengers?

(a) Upon request from an agency's travel approving authority, the agency's aviation program must provide cost estimates to assist in determining whether or not use of a Government aircraft to carry passengers is justified. See OMB Circular A–126 for more information on justifying travel on Government aircraft. See also the Government Aircraft Cost Accounting Guide (CAG) published by GSA (defined in § 102–33.20) for guidance on estimating the cost of using a Government aircraft. The cost of using a Government aircraft is—

(1) The variable cost of using a Federal aircraft;

(2) The amount your agency will be charged by a CAS provider; or

(3) The variable cost of using an aircraft owned by another agency as reported by the owning agency if you are not charged for the use of the aircraft.

(b) In weighing alternatives for travel on Government aircraft, you must also consider the following:

(1) If no follow-on trip is scheduled, all time required positioning the aircraft to begin the trip and to return the aircraft to its normal base of operations.

(2) If a follow-on trip requires repositioning, the cost for the repositioning should be charged to the associated follow-on trip.

(3) If an aircraft supports a multi-leg trip (a series of flights scheduled sequentially), the use of the aircraft for the total trip may be justified by comparing the total variable cost of the entire trip to the commercial aircraft cost (including charter) for all legs of the trip.

(4) The use of foreign aircraft as CAS is authorized when the agency has determined that an equivalent level of safety exists as compared to U.S. operations of a like kind. The safety of passengers shall be the overriding consideration for the selection of travel mode when comparing foreign sources of scheduled commercial airlines and CAS.

MANAGING AIRCRAFT PARTS

§ 102–33.225 How must we manage aircraft parts?

You must manage your aircraft parts by maintaining proper storage, protection, maintenance procedures, and records for the parts throughout their life cycles.

§ 102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?

You may use dual-use military FSCAP on non-military aircraft operated under restricted or standard airworthiness certificates if the parts are inspected and approved for such installation by the FAA. See detailed guidance in FAA Advisory Circular 20–142, ''Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers.''

§ 102–33.235 What documentation must we maintain for life-limited parts and FSCAP?

For life-limited parts and FSCAP, you must hold and update the documentation that accompanies these parts for as long as you use or store them. When you dispose of life-limited parts or FSCAP, the up-to-date documentation must accompany the parts. (See § 102–33.370.)

Subpart D—Disposing of Government Aircraft and Aircraft Parts

OVERVIEW

§ 102–33.240 What must we consider before disposing of aircraft and aircraft parts?

Before disposing of aircraft and aircraft parts, you must first determine if the aircraft or parts are excess to your agency's mission requirements or if you will need replacements (i.e., your aircraft or parts are not excess), as follows:

(a) If your aircraft/parts are ...	And ...	Then ...
No longer needed to perform, or cannot perform, any Governmental function for your agency, i.e., they are excess to your needs,	You will not replace them,.	You must report them to GSA as excess property (see part 102–36 of this subchapter B).

(b) If your aircraft/parts are ...	But ...	Then ...
No longer suitable for performing their mission(s) for your agency,	You need to replace them to continue performing your mission(s).	You are prohibited from exchanging or selling your aircraft unless you ask for and receive approval from GSA to deviate from part 102–39 of this subchapter B. However, exchange/sale of aircraft parts is permitted.

§ 102–33.245 May we report as excess, or replace (*i.e.,* by exchange/sale), both operational and non-operational aircraft?

Yes, you may report as excess both operational and non-operational aircraft by following the rules governing excess property in part 102–36 of this subchapter B. Exchange or sale of aircraft is prohibited by part 102–39 of this subchapter B, so you will need approval from GSA to deviate from that part to replace operational or non-operational aircraft by exchange/sale. (See § 102–33.275 for further guidance on this restriction).

§ 102–33.250 May we report as excess, or replace, declassified aircraft?

Yes, you may report as excess, or replace, a declassified aircraft (see §§ 102–33.415 through 102–33.420 for information on declassifying aircraft). However, a declassified aircraft is no longer considered an aircraft, but may be considered as a group of aircraft parts or other property for ground use only. You must carry such ''aircraft parts or other property'' on your property records under the appropriate Federal Supply Classification group(s) (e.g., miscellaneous property, but not as an

''aircraft''). For disposal of the property remaining after declassification of an aircraft, you must follow the property disposal regulations in parts 102–36, 102–37, and 102–39 of this subchapter B.

§ 102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?

Yes, you must comply with the documentation procedures described in § 102–33.370 if your aircraft and/or engines contain FSCAP or life-limited parts.

§ 102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

(a) Yes, when you report as excess, or replace, an aircraft, you must report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS). For complete information, see the ''FAIRS User's Manual,'' which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

(b) Within 14 calendar days of the date you dispose of the aircraft, you must report—

(1) The disposal method (e.g., reassignment, inter-agency transfer, donation, sale as surplus or scrap, declassification, or exchange/sale);

(2) The disposal date; and

(3) The identity and type of recipient (e.g., State, educational institution, executive agency, commercial vendor).

REPORTING EXCESS GOVERNMENT AIRCRAFT

§ 102–33.265 What are our options if aircraft are excess to our needs?

If aircraft are excess to your needs, your options include first determining if any of your sub-agencies can use the aircraft. If so, you may reassign the aircraft within your agency. If not, you must report the aircraft as excess property to GSA (see parts 102–36 and 102–37 of this subchapter B). GSA will dispose of the property, giving priority first to transferring it to another Federal agency, next to donating it as surplus property, and finally to selling it to the public as surplus.

§ 102–33.270 What is the process for reporting an excess aircraft?

To report an excess aircraft, you must submit a Standard Form (SF) 120, Report of Excess Personal Property (see § 102–2.135 of this chapter), to GSA (Federal Supply Service (FSS) Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102–3434, (415) 522–3029). You may also report electronically to GSA's Federal Disposal System (FEDS). For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305–7240.

REPLACING AIRCRAFT THROUGH EXCHANGE OR SALE

§ 102–33.275 Are there restrictions on replacing aircraft by exchange or sale?

Yes, because aircraft are on GSA's exchange/sale prohibited list (see part 102–39 of this subchapter B), you may not exchange or sell aircraft unless you obtain approval from GSA to deviate from part 102–39 of this subchapter B (see § 102–33.10 on how to request a deviation). In your letter of request to GSA, you must include the full details of your situation and the proposed transaction and certify that—

(a) Your agency's mission is dependent upon receiving a replacement aircraft;

(b) You will be replacing the aircraft with similar-type property (see § 102–39.15 of this subchapter B for a definition of ''similar'');

(c) Your replacement will be on a one-for-one basis (you must request and justify a waiver from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, to deviate from the one-for-one rule); and

(d) The exchange or sale meets all other requirements in part 102–39 of this subchapter B.

NOTE TO § 102–33.275: The requirement to get GSA's approval for an exchange/sale does not apply if a Federal statute specifically authorizes your agency to exchange or sell certain aircraft.

§ 102–33.280 What are our options if we need a replacement aircraft?

If you need to replace an aircraft, and you have GSA's prior written approval for a deviation (see § 102–33.275), your options include—

(a) Negotiating and conducting an exchange transaction directly with an aircraft provider and obtaining credit toward the purchase of a replacement aircraft, following the procurement rules applicable to your agency; or

(b) Selling the aircraft and using the proceeds to offset the cost of purchasing a replacement aircraft, following part 102–39 of this subchapter B. The GSA can conduct sales for you; contact GSA (Region 9) for more information.

§ 102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for uncertificated aircraft or aircraft that we have operated as public aircraft (*i.e.*, not in compliance with the Federal Aviation Regulations, 14 CFR chapter I)?

Yes, when you exchange or sell uncertificated aircraft or aircraft maintained as public aircraft, you must ensure that the exchange or sales offerings contain the following statement:

Warning to purchasers/recipients. The aircraft you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the aircraft into compliance with 14 CFR chapter I, or other applicable standards, by obtaining all necessary FAA inspections or modifications.

§ 102–33.290 What other disclaimers must we include in our exchange/sale agreements for aircraft?

When you exchange or sell aircraft, you must ensure that the following disclaimer is signed by the purchaser/recipient and received by the Government before releasing the aircraft to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this aircraft, its use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

§ 102–33.295 May we exchange or sell an aircraft through reimbursable transfer to another executive agency?

Yes, you may exchange or sell aircraft through reimbursable transfer to another executive agency if you have prior written approval from GSA to deviate from part 102–39 of this subchapter B (see § 102–33.275). See part 102–39, subpart B, and part 102–36 of this subchapter B for more information on reimbursable transfer of property. Before offering to the public an aircraft that is eligible for exchange/sale, you should consult with other executive agencies to find out if any agency is interested in taking the aircraft for reimbursement in funds or in kind (as you are directed in part 102–39 of this subchapter B).

NOTE TO § 102–33.295: Some agencies may also have special congressional authorization to recover costs.

DISPOSING OF AIRCRAFT PARTS

§ 102–33.300 What must we consider before disposing of aircraft parts?

Before disposing of aircraft parts, you must determine if they are excess to your agency's mission requirements or if you will need replacements (i.e., they are not excess). The table in § 102–33.240 shows the differences between excess and replacement parts.

§ 102–33.305 May we report as excess, or replace, FSCAP and life-limited parts?

Yes, you may report as excess, or replace, FSCAP and life-limited parts, but they require special handling. See the tables in § 102–33.370.

§ 102–33.310 May we report as excess, or replace, unsalvageable aircraft parts?

No, you may not report unsalvageable aircraft parts as excess or exchange or sell them for replacements. You must mutilate unsalvageable parts. You may sell the mutilated parts only as scrap or report that scrap to GSA for sale.

§ 102–33.315 What are the procedures for mutilating unsalvageable aircraft parts?

To mutilate unsalvageable aircraft parts, you must—

(a) Destroy the data plates, remove the serial/lot/part numbers, and cut, crush, grind, melt, burn, or use other means to prevent the parts from being misidentified or used as serviceable aircraft parts. See detailed guidance in the FAA's Advisory Circular 21-38, ''Disposition of Unsalvageable Aircraft Parts and Materials,'' available from the FAA. Call your regional FAA Flight Standards District Office for additional guidance;

(b) Ensure that an authorized official of your agency witnesses and documents the mutilation; and

(c) Retain a signed certification and statement of mutilation.

§ 102–33.320 What must we do if we are unable to perform required mutilation of aircraft parts?

If you are unable to perform the required mutilation of aircraft parts, you must turn in the parts to a Federal or federally approved facility for mutilation and proper disposition. Ensure that any contractor follows the provisions of § 102–33.315 for mutilating and disposing of the parts.

§ 102–33.325 What documentation must we furnish with excess/surplus or replaced parts when they are transferred, donated, exchanged, or sold?

When you transfer, donate, exchange, or sell excess/surplus or replaced parts, you must—

(a) Furnish all applicable labels, tags, and historical and modification records for serviceable aircraft parts;

(b) Mark mutilated parts as unsalvageable (mutilated parts may be sold only for scrap; see § 102–33.315); and

(c) Ensure that all available tags, labels, applicable historical data, life-histories, and maintenance records accompany FSCAP and life-limited parts and that FSCAP criticality codes (see § 102–33.375) are perpetuated on documentation (see § 102–33.330 for additional requirements).

REPORTING EXCESS AIRCRAFT PARTS

§ 102–33.330 What must we do with aircraft parts that are excess to our needs?

If you have aircraft parts that are excess to your needs, you must first determine if any of your sub-agencies can use the parts. If they can, you may reassign them within your agency. If they cannot, then you must report the excess parts to the GSA FSS Office in your region, using SF 120, Report of Excess Personal Property (see § 102–2.135 of subchapter A of this chapter). When reporting excess FSCAP, you must include the manufacturer's name, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120. You may report electronically using the FEDS system. For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305–7240. See parts 102–36 and 102–37 of this subchapter B on disposing of excess property.

§ 102–33.335 What are the receiving agency's responsibilities in the transfer or donation of aircraft parts?

An agency that receives transferred or donated aircraft parts must:

(a) Verify that all applicable labels and tags and historical and modification records are furnished with serviceable aircraft parts (i.e., parts that are intended for flight use). This requirement does not apply to parts for ground use only. See the tables at § 102–33.370.

(b) Mutilate all transferred or donated parts that you discover to be unsalvageable, and dispose of them properly, following the procedures in § 102–33.315.

§ 102–33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?

In disposing of excess aircraft parts, the GSA Federal Supply Service office in your region reviews your SF 120, Report of Excess Personal Property (see § 102–2.135 of subchapter A of this chapter) for completeness and accuracy (of

status, condition, and FSCAP and demilitarization codes if applicable) and ensures that the following certification is included on disposal documents (e.g., transfer orders or purchasers' receipts):

Because of the critical nature of aircraft parts' failure and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on an aircraft meet applicable Federal Aviation Regulations and must obtain required certifications. GSA makes no representation as to a part's conformance with the Federal Aviation Administration's requirements.

§ 102–33.345 What are a State agency's responsibilities in the donation of Federal Government aircraft parts?

When a State agency accepts surplus Federal Government aircraft parts for donation, the agency must—

(a) Review donation and transfer documents for completeness and accuracy, and ensure that the certification in § 102–33.340 is included;

(b) Ensure that when the donee determines the part to be unsalvageable, the donee mutilates the part following the procedures in § 102–33.315; and

(c) Ensure that the donee retains, maintains, and perpetuates all documentation for serviceable parts (i.e., parts intended for flight use).

REPLACING AIRCRAFT PARTS THROUGH EXCHANGE OR SALE

§ 102–33.350 Do we need approval from GSA to replace aircraft parts by exchange or sale?

No, you don't need approval from GSA to replace parts by exchange or sale. However, you must follow the provisions of this subpart and part 102–39 of this subchapter B. Replacement parts do not have to be for the same type or design of aircraft, but you must use the exchange allowance or sales proceeds to purchase aircraft parts to support your aviation program to meet the ''similarity'' requirement in part 102–39 of this subchapter B.

§ 102–33.355 May we do a reimbursable transfer of parts with another executive agency?

Yes, you may request that the Federal Supply Service office in your region approve a reimbursable transfer of aircraft parts under the exchange/sale authority in part 102–39 of this subchapter B to another executive agency as a way to receive parts in exchange or money to be used to purchase replacement parts.

§ 102–33.360 What is the process for selling or exchanging aircraft parts for replacement?

(a) You or your agent (e.g., another Federal agency or GSA, Federal Supply Service (FSS)) may transact an exchange or sale directly with a non-federal source or do a reimbursable transfer with another executive agency as long as you or your agent—

(1) Follow the provisions in this part and in part 102–39 of this subchapter B.

(2) Ensure that the applicable labels and tags, historical data and modification records accompany the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

Warning to purchasers/recipients. The parts you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the parts into compliance with 14 CFR part 21 or other applicable standards, by obtaining all necessary FAA inspections or modifications.

(3) Ensure that the following certification is signed by the purchaser/recipient and received by the Government before releasing parts to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

(b) GSA, Federal Supply Service (FSS), can conduct sales of aircraft parts for you. Contact your GSA Regional Office for more information.

§ 102–33.365 Must we report exchange or sale of parts to FAIRS?

No, you don't have to report exchange or sale of parts to FAIRS. However, you must keep records of the

transactions, which GSA may request to see.

SPECIAL REQUIREMENTS FOR DISPOSING OF FLIGHT SAFETY CRITICAL AIRCRAFT PARTS (FSCAP) AND LIFE-LIMITED PARTS

§ 102–33.370 What must we do to dispose of military FSCAP or life-limited parts?

To dispose of military FSCAP or life-limited parts, you must use the following tables:

(a) Table 1 for disposing of uninstalled FSCAP and life-limited parts follows:

TABLE 1 FOR DISPOSING OF UNINSTALLED FSCAP AND LIFE-LIMITED PARTS

(1) If an Uninstalled FSCAP (i.e., not installed in an aircraft or engine)—		
(i) Is documented	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is undocumented, but traceable to its original equipment manufacturer (OEM) or production approval holder (PAH)—	Then	(A) You may exchange or sell it only to the OEM or PAH under part 102–39 of this subchapter B; (B) GSA may transfer or donate it for flight use, but only by making it a condition of the transfer or donation agreement that the recipient will have the part inspected, repaired, and certified by the OEM or PAH before putting it into service (Note: Mark parts individually to ensure that the recipient is aware of the parts' service status); or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(iii) Is undocumented and untraceable, you must mutilate it, and—	Then	(A) GSA may transfer or donate it for ground use only, after you mark it, ''FSCAP—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You may sell it only for scrap under §§ 102–33.310 and 102–33.315.
(2) If an uninstalled life-limited part (i.e., not installed in an aircraft or engine)—		
(i) Is documented with service life remaining.	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is documented with no service life remaining, or undocumented, GSA may not transfer it to another executive agency for flight use—	But	(A) GSA may transfer or donate it for ground use only, after you mutilate and mark it, ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY'' (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You must mutilate it and may sell it only for scrap.

(b) Table 2 for disposing of installed life-limited parts follows:

TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS

(1) If a life-limited part is installed in an aircraft or an engine, and it—		
(i) Is documented with service life remaining—	Then	(A) You may exchange or sell the aircraft or engine, or GSA may tranfer the aircraft or engine to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY.'' (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been multilated and marked)).
(ii) Is documented with no service life remaining, or undocumented—	Then	(A) You must remove and mutilate the part before you exchange or sell the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of paragraph (a) of this section). (Note: If an aircraft or engine is exchanged or sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate it before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 in paragraph (a) of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part's service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it ''EXPIRED LIFE-LIMITED—NOT AIRWORTHY.'' (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).

[67 FR 67743, Nov. 6, 2002; 67 FR 70480, Nov. 22, 2002]

§ 102–33.375 What is a FSCAP Criticality Code?

A FSCAP Criticality Code is a code assigned by DOD to indicate the type of FSCAP: Code ''F'' indicates a standard FSCAP; Code ''E'' indicates a nuclear-hardened FSCAP. You must perpetuate a FSCAP's Criticality Code on all property records and reports of excess. If the code is not annotated on the transfer document that you received when you acquired the part, you may contact the appropriate military service or query DOD's Federal Logistics Information System (FLIS—FedLog) using the National Stock Number (NSN) or the part number. For assistance in subscribing to the FLIS service, contact the FedLog Consumer Support Office, 800–351–4381.

Subpart E—Reporting Information on Government Aircraft

OVERVIEW

§ 102–33.380 Who must report information to GSA on Government aircraft?

You must report information to GSA on Government aircraft if your agency—

(a) Is an executive agency of the United States Government; and

(b) Owns, lease-purchases, bails, borrows, loans, leases, rents, charters, or contracts for (or obtains by inter-service support agreement) Government aircraft.

§ 102–33.385 Is any civilian executive agency exempt from the requirement to report information to GSA on Government aircraft?

No civilian executive agency is exempt, however, the Armed Forces (including the U.S. Coast Guard, the Reserves, and the National Guard) and

U.S. intelligence agencies are exempt from the requirement to report to GSA on Government aircraft.

§ 102–33.390 What information must we report on Government aircraft?

(a) You must report the following information to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405:

(1) Inventory data on Federal aircraft through FAIRS.

(2) Cost and utilization data on Federal aircraft through FAIRS.

(3) Cost and utilization data on CAS aircraft and related aviation services through FAIRS.

(4) Accident and incident data through the ICAP Aircraft Accident Incident Reporting System (AAIRS).

(5) The results of cost-comparison studies in compliance with OMB Circular A–76 to justify purchasing, leasing, modernizing, replacing, or otherwise acquiring aircraft and related aviation services.

(b) Information on senior Federal officials and others who travel on Government aircraft to GSA, Travel Management Policy Division (MTT), 1800 F Street, NW., Washington, DC 20405 (see OMB Circular A–126 for specific rules and a definition of senior Federal official).

FEDERAL AVIATION INTERACTIVE REPORTING SYSTEM (FAIRS)

§ 102–33.395 What is FAIRS?

FAIRS is a management information system operated by GSA (MTA) to collect, maintain, analyze, and report information on Federal aircraft inventories and cost and usage of Federal aircraft and CAS aircraft (and related aviation services). Users access FAIRS through a highly-secure Web site. The ''FAIRS User's Manual'' contains the business rules for using the system and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.400 How must we report to FAIRS?

You must report to FAIRS electronically through a secure Web interface to the FAIRS application on the Internet. For information on becoming a FAIRS user, call GSA, Aircraft Management Policy Division, (MTA).

§ 102–33.405 When must we report to FAIRS?

You must report any changes in your Federal aircraft inventory within 14 calendar days. You must report cost and utilization data to FAIRS at the end of every quarter of the fiscal year (December 31, March 31, June 30, and September 30). However, you may submit your information to FAIRS on a daily, weekly, or monthly basis. To provide enough time to calculate your cost and utilization data, you may report any one quarter's cost and utilization in the following quarter, as follows:

Quarter	Submit
QTR 1—October 1—December 31	Federal inventory for QTR 1. Federal cost and utilization for previous QTR 4. CAS cost and utilization for previous QTR 4.
QTR 2—January 1—March 31	Federal inventory for QTR 2. Federal cost and utilization for QTR 1. CAS cost and utilization for QTR 1.
QTR 3—April 1—June 30	Federal inventory for QTR 3. Federal cost and utilization for QTR 2. CAS cost and utilization for QTR 2.
QTR 4—July 1—September 30	Federal inventory for QTR 4. Federal cost and utilization for QTR 3. CAS cost and utilization for QTR 3.

FEDERAL INVENTORY DATA

§ 102–33.410 What are Federal inventory data?

Federal inventory data include information on each of the operational and non-operational Federal aircraft that you own, bail, borrow, or loan. See the ''FAIRS User's Manual,'' published by GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for a complete listing and definitions of the FAIRS Federal inventory data elements.

§ 102–33.415 When may we declassify an aircraft and remove it from our Federal aircraft inventory?

When an aircraft is lost or destroyed, or is otherwise non-operational and you want to retain it, you may declassify it and remove it from your Federal aircraft inventory. When you declassify an aircraft, you remove the data plate permanently, and the resulting ''aircraft parts or other property'' are no longer considered an aircraft. See §§ 102–33.415 through 102–33.420 for rules on declassifying aircraft, and see part 102–36 or 102–37 of this subchapter B on reporting declassified aircraft as excess.

§ 102–33.420 How must we declassify an aircraft?

To declassify an aircraft, you must—

(a) Send a letter to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, requesting approval to declassify the aircraft and stating that the aircraft is non-operational (which includes lost or destroyed). In this letter, identify the Federal Supply Classification (FSC) group(s) that the declassified aircraft/parts will fall under if applicable, describe the condition of the aircraft (crash-damaged, unrecoverable, parts unavailable, etc.), and include photographs as appropriate.

(b) Within 14 calendar days of receiving GSA's approval to declassify the aircraft—

(1) Following applicable Federal Aviation Regulations (14 CFR 45.13), request approval from your local FAA Flight Standards District Office (FSDO) to remove the manufacturer's data plate;

(2) Within 14 calendar days of receiving approval from FAA to remove the data plate, inform GSA (MTA) of FAA's approval, send the data plate by courier or registered mail to the FAA, as directed by your FSDO, and remove any Certificate of Airworthiness and the aircraft's registration form from the aircraft, complete the reverse side of the registration form, and send both documents to the FAA.

(c) Delete the aircraft from your FAIRS inventory records and update your personal property records, deleting the declassified aircraft from the aircraft category and adding it to another Federal Supply Classification group or groups, as appropriate.

FEDERAL AIRCRAFT COST AND UTILIZATION DATA

§ 102–33.425 What Federal aircraft cost and utilization data must we report?

You must report certain costs for each of your Federal aircraft and the number of hours that you flew each aircraft. In reporting the costs of your Federal aircraft, you must report both the amounts you paid as Federal costs, which are for services the Government provides, and the amounts you paid as commercial costs in support of your Federal aircraft. For a list and definitions of the Federal aircraft cost and utilization data elements, see the ''FAIRS User's Manual,'' which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.430 Who must report Federal aircraft cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report Federal cost and utilization data on all Federal aircraft. Agencies should report Federal cost and utilization data for loaned aircraft only if Federal money was expended on the aircraft.

COMMERCIAL AVIATION SERVICES (CAS) COST AND UTILIZATION DATA

§ 102–33.435 What CAS cost and utilization data must we report?

You must report the costs and flying hours for each CAS aircraft you hire.

You must also report the costs and contractual periods for related aviation services that you hire (i.e., by contract or through an inter-service support agreement (ISSA)). Report related aviation services that you hire commercially in support of Federal aircraft as ''paid out'' Federal aircraft costs—do not report them as CAS. See the ''FAIRS User's Manual,'' available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405 for a complete description of the CAS data elements reportable to FAIRS.

§ 102–33.440 Who must report CAS cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report CAS cost and utilization data. You must report CAS cost and utilization data if your agency makes payments to—

(a) Charter or rent aircraft;

(b) Lease or lease-purchase aircraft;

(c) Hire aircraft and related services through an ISSA or a full service contract; or

(d) Obtain related aviation services through an ISSA or by contract except when you use the services in support of Federal aircraft.

ACCIDENT AND INCIDENT DATA

§ 102–33.445 What accident and incident data must we report?

You must report within 14 calendar days to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, all aviation accidents and incidents that your agency is required to report to the NTSB. You may also report other incident information. The GSA and the ICAP will use the collected accident/incident information in conjunction with FAIRS' data, such as flying hours and missions, to calculate safety statistics for the Federal aviation community and to share safety lessons-learned.

§ 102–33.450 How must we report accident and incident data?

You must report accident and incident data through the ICAP Aviation Accident and Incident Reporting System (AAIRS), which is accessible from the Internet. Instructions for using the system and the data elements and definitions for accident/incident reporting are available through the system or from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

COMMON AVIATION MANAGEMENT INFORMATION STANDARD (C-AMIS)

§ 102–33.455 What is C-AMIS?

Common Aviation Management Information Standard (C-AMIS), jointly written by the ICAP and GSA and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, is a guide to assist agencies in developing or modernizing their internal aviation management information systems. C-AMIS includes standard specifications and data definitions related to Federal aviation operations.

§ 102–33.460 What is our responsibility in relation to C-AMIS?

If you use a management information system to provide data to FAIRS by batch upload, you are responsible for ensuring that your system is C-AMIS-compliant. For more information on compliance with C-AMIS, contact GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

PART 102–34—MOTOR VEHICLE MANAGEMENT

Subpart A—General Provisions

Sec.

102–34.5 What does this part cover?
102–34.10 What are the governing authorities for this part?
102–34.15 Who must comply with these provisions?
102–34.20 What motor vehicles are not covered by this part?
102–34.25 To whom do ''we'', ''you'', and their variants refer?
102–34.30 How do we request a deviation from the provisions of this part?

DEFINITIONS

102–34.35 What definitions apply to this part?

Subpart B—Obtaining Fuel Efficient Motor Vehicles

102–34.40 Who must comply with motor vehicle fuel efficiency requirements?
102–34.45 How are passenger automobiles classified?
102–34.50 What size motor vehicles may we obtain?
102–34.55 Are there fleet average fuel economy standards we must meet?
102–34.60 How do we calculate the average fuel economy for Government motor vehicles?
102–34.65 How may we request an exemption from the fuel economy standards?
102–34.70 What do we do with completed calculations of our fleet vehicle acquisitions?
102–34.75 Who is responsible for monitoring our compliance with fuel economy standards for motor vehicles we obtain?
102–34.80 Where may we obtain help with our motor vehicle acquisition plans?

Subpart C—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

102–34.85 What motor vehicles require motor vehicle identification?
102–34.90 What motor vehicle identification must we display on Government motor vehicles?
102–34.95 What motor vehicle identification must the Department of Defense (DOD) display on motor vehicles it owns, or leases commercially?
102–34.100 Where is motor vehicle identification displayed?
102–34.105 Before we sell a motor vehicle, what motor vehicle identification must we remove?

LICENSE PLATES

102–34.110 Must Government motor vehicles use Government license plates?
102–34.115 Can official U.S. Government license plates be used on motor vehicles not owned or leased by the Government?
102–34.120 Do we need to register Government motor vehicles?
102–34.125 Where may we obtain U.S. Government license plates?
102–34.130 How do we display U.S. Government license plates on Government motor vehicles?
102–34.135 What do we do about a lost or stolen license plate?
102–34.140 What records do we need to keep on U.S. Government license plates?
102–34.145 How are U.S. Government license plates coded?
102–34.150 How can we get a new license plate code designation?

IDENTIFICATION EXEMPTIONS

102–34.155 What are the types of motor vehicle identification exemptions?
102–34.160 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?
102–34.165 What information must the limited exemption certification contain?
102–34.170 For how long is a limited exemption valid?
102–34.175 What motor vehicles have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?
102–34.180 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification on some of their vehicles?
102–34.185 What license plates do we use on motor vehicles that are exempt from motor vehicle identification requirements?
102–34.190 What special requirements apply to exempted motor vehicles using District of Columbia or State license plates?
102–34.195 Must we submit a report concerning motor vehicles exempted under this subpart?

Subpart D—Official Use of Government Motor Vehicles

102–34.200 What is official use of Government motor vehicles?
102–34.205 May I use a Government motor vehicle for transportation between my residence and place of employment?
102–34.210 May I use a Government motor vehicle for transportation between places of employment and mass transit facilities?
102–34.215 May Government contractors use Government motor vehicles?
102–34.220 What does GSA do if it learns of unofficial use of a Government motor vehicle?
102–34.225 How are Federal employees disciplined for misuse of Government motor vehicles?
102–34.230 How am I responsible for protecting Government motor vehicles?
102–34.235 Am I bound by State and local traffic laws?
102–34.240 Who pays for parking fees?
102–34.245 Who pays for parking fines?
102–34.250 Do Federal employees in Government motor vehicles have to use all safety devices and follow all safety guidelines?

Subpart E—Replacement of Motor Vehicles

102–34.255 What are motor vehicle replacement standards?
102–34.260 May we replace a Government-owned motor vehicle sooner?

102–34.265 May we keep a Government-owned motor vehicle even though the standard permits replacement?
102–34.270 How long must we keep a Government-owned motor vehicle?

Subpart F—Scheduled Maintenance of Motor Vehicles

102–34.275 What kind of maintenance programs must we have?
102–34.280 What State inspections must we have for Government motor vehicles?
102–34.285 Where can we obtain help in setting up a maintenance program?

Subpart G—Motor Vehicle Crash Reporting

102–34.290 What forms do I use to report a crash involving a domestic fleet motor vehicle?
102–34.295 To whom do we send crash reports?

Subpart H—Disposal of Motor Vehicles

102–34.300 How do we dispose of a domestic fleet motor vehicle?
102–34.305 What forms do we use to transfer ownership when selling a motor vehicle?
102–34.310 How do we distribute the completed Standard Form 97?

Subpart I—Motor Vehicle Fueling

102–34.315 How do we obtain fuel for Government motor vehicles?
102–34.320 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?
102–34.325 What type of fuel do I use in Government motor vehicles?

Subpart J—Federal Fleet Report

102–34.330 What is the Federal Fleet Report?
102–34.335 How do I submit information to the General Services Administration (GSA) for the Federal Fleet Report (FFR)?
102–34.340 Do we need a fleet management information system?
102–34.345 What records do we need to keep?

Subpart K—Forms

102–34.350 How do we obtain the forms prescribed in this part?

AUTHORITY: 40 U.S.C. 121(c); 40 U.S.C. 17503; 31 U.S.C. 1344; 49 U.S.C. 32917; E.O. 12375.

SOURCE: 74 FR 11871, Mar. 20, 2009, unless otherwise noted.

Subpart A—General Provisions

§ 102–34.5 What does this part cover?

This part governs the economical and efficient management and control of motor vehicles that the Government owns, leases commercially or leases through GSA Fleet. 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.

§ 102–34.10 What are the governing authorities for this part?

The authorities for the regulations in this part are 40 U.S.C. 121(c), 40 U.S.C. 17503, 31 U.S.C. 1344, 49 U.S.C. 32917, and E.O. 12375.

§ 102–34.15 Who must comply with these provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102–34.20 What motor vehicles are not covered by this part?

Motor vehicles not covered by this part are:

(a) Military design motor vehicles;

(b) Motor vehicles used for military field training, combat, or tactical purposes;

(c) Motor vehicles used principally within the confines of a regularly established military post, camp, or depot; and

(d) Motor vehicles regularly used by an agency to perform investigative, law enforcement, or intelligence duties, if the head of the agency determines that exclusive control of the vehicle is essential for effective performance of duties, although such vehicles are subject to subpart D and subpart J of this part.

§ 102–34.25 To whom do "we", "you", and their variants refer?

Unless otherwise indicated, use of pronouns ''we'', ''you'', and their variants throughout this part refer to you as an executive agency, as your agency's fleet manager, or as a motor vehicle user or operator, as appropriate.

§ 102–34.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

DEFINITIONS

§ 102–34.35 What definitions apply to this part?

The following definitions apply to this part:

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

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 120 continuous days or more. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5).

Domestic fleet means all reportable motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Foreign fleet means all reportable motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Government motor vehicle means any motor vehicle that the Government owns or leases. This includes motor vehicles obtained through purchase, excess, forfeiture, commercial lease, or GSA Fleet lease.

Government-owned motor vehicle means any motor vehicle that the Government has obtained through purchase, excess, forfeiture, or otherwise and for which the Government holds title.

GSA Fleet lease means obtaining a motor vehicle from the General Services Administration Fleet (GSA Fleet).

Law enforcement motor vehicle means a light duty motor vehicle 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; or

(4) A forfeited 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 commercial design motor vehicles) designed according to military specifications to directly support 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 § 102–34.20).

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 readily identifying the department, agency, establishment, corporation, or service by which the motor vehicle is used.

Motor vehicle markings (see definition of ''Motor vehicle identification'' in this section).

Motor vehicle purchase means buying a motor vehicle from a commercial

source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5.)

Motor vehicle rental means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 120 continuous days.

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

Owning agency means the executive agency that holds the vehicle title, manufacturer's Certificate of Origin, or is the lessee of a commercial 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 any Government motor vehicles used by an executive agency or activity, including those used by contractors. Also included are motor vehicles designed or acquired for a specific or unique purpose, including motor vehicles that serve as a platform or conveyance for special equipment, such as a trailer. Excluded are material handling equipment and construction equipment not designed and used primarily for highway operation (e.g., if it must be trailered or towed to be transported).

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

[74 FR 11871, Mar. 20, 2009, as amended at 76 FR 76623, Dec. 8, 2011]

Subpart B—Obtaining Fuel Efficient Motor Vehicles

§ 102–34.40 Who must comply with motor vehicle fuel efficiency requirements?

(a) Executive agencies operating domestic fleets must comply with motor vehicle fuel efficiency requirements for such fleets.

(b) This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement or emergency rescue work and foreign fleets. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing Government motor vehicles.

§ 102–34.45 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.
III	III	Midsize.
IV	IV	Large.
V	Limousine..	

§ 102–34.50 What size motor vehicles may we obtain?

(a) You may only obtain the minimum size of motor vehicle necessary to fulfill your agency's mission in accordance with the following considerations:

(1) You must obtain motor vehicles that achieve maximum fuel efficiency.

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

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

(4) Obtain large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

(b) Agencies must establish and document a structured vehicle allocation methodology to determine the appropriate size and number of motor vehicles (see FMR Bulletin B–9, located at *http://www.gsa.gov/bulletin*, for guidance).

§ 102–34.55 Are there fleet average fuel economy standards we must meet?

(a) Yes. 49 U.S.C. 32917 and Executive Order 12375 require that each executive

agency meet the fleet average fuel economy standards in place as of January 1 of each fiscal year. The standards for passenger automobiles are prescribed in 49 U.S.C. 32902(b). The Department of Transportation publishes the standards for light trucks and amendments to the standards for passenger automobiles at *http://www.dot.gov*.

(b) These standards do not apply to military design motor vehicles, law enforcement motor vehicles, or motor vehicles intended for emergency rescue.

§ 102–34.60 How do we calculate the average fuel economy for Government motor vehicles?

You must calculate the average fuel economy for Government motor vehicles as follows:

(a) Because there are so many motor vehicle configurations, you must take an average of all light duty motor vehicles by category that your agency obtained and operated during the fiscal year.

(b) This calculation is the sum of such light duty motor vehicles 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. The unadjusted city/highway mile-per-gallon ratings for each make and model are published by the Environmental Protection Agency (EPA) for each model year and published at *http://www.fueleconomy.gov*.

(c) 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.

$$= \frac{600}{\frac{200}{24.3} + \frac{150}{24.8} + \frac{150}{20.4} + \frac{100}{22.2}}$$

$$= \frac{600}{8.2305 + 6.0484 + 7.3530 + 4.5045}$$

$$= \frac{600}{26.1364} = 22.9565 \text{ (Rounded to nearest 0.1 mpg.)}$$

(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?

You must submit a written request for an exemption from the fuel economy standards to: Administrator, General Services Administration, ATTN: Deputy Associate Administrator, Office of Travel, Transportation and Asset Management (MT), Washington, DC 20405.

(a) Your request for an exemption must include all relevant information necessary to permit review of the request that the vehicles be exempted based on energy conservation, economy, efficiency, or service. Exemptions may be sought for individual vehicles or categories of vehicles.

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

§ 102–34.70 What do we do with completed calculations of our fleet vehicle acquisitions?

You must maintain the average fuel economy data for each year's vehicle acquisitions on file at your agency headquarters in accordance with the National Archives and Records Administration, General Records Schedule 10, Motor Vehicle and Aircraft Maintenance and Operations Records, Item 4, Motor Vehicle Report Files. Exemption requests and their disposition must also be maintained with the average fuel economy files.

§ 102–34.75 Who is responsible for monitoring our compliance with fuel economy standards for motor vehicles we obtain?

Executive agencies are responsible for monitoring their own compliance with fuel economy standards for motor vehicles they obtain.

§ 102–34.80 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plans, contact the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

Subpart C—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

§ 102–34.85 What motor vehicles require motor vehicle identification?

All Government motor vehicles must display motor vehicle identification unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180.

§ 102–34.90 What motor vehicle identification must we display on Government motor vehicles?

Unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180, Government motor vehicles must display the following identification:

(a) ''For Official Use Only'';

(b) ''U.S. Government''; and

(c) Identification that readily identifies the agency owning the vehicle.

§ 102–34.95 What motor vehicle identification must the Department of Defense (DOD) display on motor vehicles it owns or leases commercially?

Unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180, the following must appear on motor vehicles that the DOD owns or leases commercially:

(a) ''For Official Use Only''; and

(b) An appropriate title for the DOD component responsible for the vehicle.

§ 102–34.100 Where is motor vehicle identification displayed?

Motor vehicle identification is displayed as follows:

(a) *For most Government motor vehicles,* preferably on the official U.S. Government license plate. Some Government motor vehicles may display motor vehicle identification on a decal in the rear window, or centered on both front doors if the vehicle is without a rear window, or where identification on the rear window would not be easily seen.

(b) *For trailers,* on both sides of the front quarter of the trailer in a conspicuous location.

NOTE TO § 102–34.100: Each agency or activity that uses decals to identify Government motor vehicles is responsible for acquiring its own decals and for replacing them when necessary due to damage or wear.

§ 102–34.105 Before we sell a motor vehicle, what motor vehicle identification must we remove?

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

LICENSE PLATES

§ 102–34.110 Must Government motor vehicles use Government license plates?

Yes, you must use Government license plates on Government motor vehicles, with the exception of motor vehicles exempted under § 102–34.160, § 102–34.175 or § 102–34.180.

§ 102–34.115 Can official U.S. Government license plates be used on motor vehicles not owned or leased by the Government?

No, official U.S. Government license plates may only be used on Government motor vehicles.

§ 102–34.120 Do we need to register Government motor vehicles?

If the Government motor vehicle displays U.S. Government license plates and motor vehicle identification, you do not need to register it in the jurisdiction where the vehicle is operated, however, you must register it in the Federal Government Motor Vehicle Registration System. GSA Fleet may register motor vehicles leased from GSA Fleet. Motor vehicles that have been exempted from the requirement to display official U.S. Government license plates under section § 102–34.160, § 102–34.175 or § 102–34.180 must be registered and inspected in accordance with the laws of the jurisdiction where the motor vehicle is regularly operated.

§ 102–34.125 Where may we obtain U.S. Government license plates?

You may obtain U.S. Government license plates for domestic fleets—

(a) By contacting: U.S. Department of Justice, UNICOR, Federal Prison Industries, Inc., 400 First Street, NW., Room 6010, Washington, DC 20534.

(b) For assistance with any issues involving license plates, contact the following office: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

NOTE TO § 102–34.125: GSA has established a Memorandum of Understanding (MOU) on behalf of all Federal agencies with Federal Prison Industries (UNICOR) for the procurement of official U.S. Government license plates. Each agency must execute an addendum to this MOU providing plate design and specific ordering and payment information before ordering license plates. Agency field activities should contact their national level Agency Fleet Manager for assistance.

§ 102–34.130 How do we display U.S. Government license plates on Government motor vehicles?

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

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

(c) Display the U.S. Government license plates until the Government motor vehicle is removed from Government service or is transferred outside the agency, or until the plates are damaged and require replacement. U.S. Government license plates shall only be used for one Government motor vehicle and shall not be reissued to another Government motor vehicle.

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

§ 102–34.135 What do we do about a lost or stolen license plate?

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

(a) *U.S. Government license plates*. Report to your local security office (or equivalent), local police, to GSA Fleet when a GSA Fleet leased motor vehicle is involved, and to the Federal Government Motor Vehicle Registration System.

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

§ 102–34.140 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 Government motor vehicles. The GSA Fleet must also keep such a record for GSA Fleet vehicles. The record must:

(a) Identify the motor vehicle to which each set of plates is assigned; and

(b) List lost, stolen, destroyed, and voided license plate numbers.

§ 102–34.145 How are U.S. Government license plates coded?

U.S. Government license plate numbers will be preceded by a letter code that designates the owning agency for the motor vehicle. The agency letter codes are listed in GSA Bulletin FMR Bulletin B–11. (FMR bulletins are located at *http://www.gsa.gov/bulletin*.)

§ 102–34.150 How can we get a new license plate code designation?

To obtain a new license plate code designation, write to the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

IDENTIFICATION EXEMPTIONS

§ 102–34.155 What are the types of motor vehicle identification exemptions?

The types of motor vehicle identification exemptions are:

(a) Limited exemption.

(b) Unlimited exemption.

(c) Special exemption.

§ 102–34.160 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 § 102–34.165). For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.165 What information must the limited exemption certification contain?

The certification must state that identifying the motor vehicle would endanger the security of the vehicle occupants or otherwise compromise the agency mission.

§ 102–34.170 For how long is a limited exemption valid?

An exemption granted in accordance with § 102–34.160 may last from one day up to 3 years. If the requirement for exemption still exists beyond 3 years, 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: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.175 What motor vehicles have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification when identifying these motor vehicles would interfere with those duties.

§ 102–34.180 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification on some of their vehicles?

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.

§ 102–34.185 What license plates do we use on motor vehicles that are exempt from motor vehicle identification requirements?

For motor vehicles that are exempt from motor vehicle identification requirements, 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 (see § 102–34.120).

§ 102–34.190 What special requirements apply to exempted motor vehicles using District of Columbia or State license plates?

Your agency head must designate an official to authorize the District of Columbia (DC) or State motor vehicle department to issue DC license plates or State license plates for motor vehicles exempt from displaying U.S. Government license plates and motor vehicle identification. The agency head must provide the name and signature of that official to the DC Department of Transportation annually, or to the equivalent State vehicle motor vehicle department, as required. Agencies must pay DC and the States for these license plates in accordance with DC or State policy. Also, for motor vehicles leased from the GSA Fleet, send a list of the

new plates to: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.195 Must we submit a report concerning motor vehicles exempted under this subpart?

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: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

Subpart D—Official Use of Government Motor Vehicles

§ 102–34.200 What is official use of Government motor vehicles?

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

§ 102–34.205 May I use a Government motor vehicle 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 part 102–5 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102–34.210 May I use a Government motor vehicle for transportation between places of employment and mass transit facilities?

Yes, you may use a Government motor vehicle for transportation between places of employment and mass transit facilities under the following conditions:

(a) The head of your agency must make a determination in writing, valid for one year, that such use is appropriate and consistent with sound budget policy, and the determination must be kept on file;

(b) There is no safe and reliable commercial or duplicative Federal mass transportation service that serves the same route on a regular basis;

(c) This transportation is made available, space provided, to other Federal employees;

(d) Alternative fuel vehicles should be used to the maximum extent practicable;

(e) This transportation should be provided in a manner that does not result in any additional gross income for Federal income tax purposes; and

(f) Motor vehicle ridership levels must be frequently monitored to ensure cost/benefit of providing and maintaining this transportation.

§ 102–34.215 May Government contractors use Government motor vehicles?

Yes, Government contractors may use Government motor vehicles when authorized in accordance with the Federal Acquisition Regulation (FAR), GSA Fleet procedures, and the following conditions:

(a) Government motor vehicles are used for official purposes only and solely in the performance of the contract;

(b) Government motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and part 102–5 of this chapter; and

(c) Contractors must:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of, Government 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 Government motor vehicles other than in the performance of the contract.

§ 102–34.220 What does GSA do if it learns of unofficial use of a Government motor vehicle?

GSA reports the matter to the head of your agency. The 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.

§ 102–34.225 How are Federal employees disciplined for misuse of Government motor vehicles?

If an employee willfully uses, or authorizes the use of, a Government 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).

§ 102–34.230 How am I responsible for protecting Government motor vehicles?

When a Government motor vehicle is under your control, you must:

(a) Park or store the Government motor vehicle in a manner that reasonably protects it from theft or damage; and

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

§ 102–34.235 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 offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102–34.240 Who pays for parking fees?

You must pay parking fees while operating a Government motor vehicle. However, you can expect to be reimbursed for parking fees incurred while performing official duties.

§ 102–34.245 Who pays for parking fines?

If you are fined for a parking violation while operating a Government motor vehicle, you are responsible for paying the fine and will not be reimbursed.

§ 102–34.250 Do Federal employees in Government motor vehicles have to use all safety devices and follow all safety guidelines?

Yes, Federal employees in Government motor vehicles have to use all provided safety devices including safety belts and follow all appropriate motor vehicle manufacturer safety guidelines.

Subpart E—Replacement of Motor Vehicles

§ 102–34.255 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 § 102–34.270).

§ 102–34.260 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.

§ 102–34.265 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 keep a Government-owned motor vehicle longer than shown in § 102–34.270 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102–34.270 How long must we keep a Government-owned motor vehicle?

You must keep a Government-owned motor vehicle for at least the years or miles shown in the following table, unless it is no longer needed and declared excess:

TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years [1]	Or miles [1]
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

[1] Minimum standards are stated in both years and miles; use whichever occurs first.

Subpart F—Scheduled Maintenance of Motor Vehicles

§ 102–34.275 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease commercially. This requirement applies to domestic fleets, and is recommended for foreign fleets. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

(a) Meet Federal and State emissions and safety standards;

(b) Meet manufacturer warranty requirements;

(c) Ensure the safe and economical operating condition of the motor vehicle throughout its life; and

(d) Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102–34.280 What State inspections must we have for Government motor vehicles?

You must have the following State inspections for Government motor vehicles:

(a) Federally-mandated emissions inspections when required by the relevant State motor vehicle administration or State environmental department. Your agency must pay for these inspections if the fee is not waived. GSA Fleet will pay the cost of these inspections for motor vehicles leased from GSA Fleet; or

(b) For motor vehicles that display license plates issued by a State, Commonwealth, territory, or possession of the United States, motor vehicle safety inspections required by the relevant motor vehicle administration. Your agency must pay for these inspections unless the fee is waived. Payment for these inspections for motor vehicles leased from GSA Fleet is the responsibility of the using agency. Government motor vehicles that display official U.S. Government license plates do not require motor vehicle safety inspections.

§ 102–34.285 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance program, contact the: General Services Administration, Attn: Motor Vehicle Policy, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov*.

Subpart G—Motor Vehicle Crash Reporting

§ 102–34.290 What forms do I use to report a crash involving a domestic fleet motor vehicle?

Use the following forms to report a domestic fleet crash. The forms should be carried in any domestic fleet motor vehicle.

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

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

§ 102–34.295 To whom do we send crash reports?

Send crash reports as follows:

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

(b) If the motor vehicle is leased from GSA Fleet, report the crash to GSA in accordance with subpart 101–39.4 of this Title.

Subpart H—Disposal of Motor Vehicles

§ 102–34.300 How do we dispose of a domestic fleet motor vehicle?

After meeting the replacement standards under subpart E of this part, you may dispose of a Government-owned domestic fleet motor vehicle. Detailed instructions for the transfer of an excess motor vehicle to another Federal agency can be found in part 102–36 of this subchapter B, information for the donation of surplus of motor vehicles can be found in part 102–37 of this subchapter B, information for the sale of motor vehicles can be found in part 102–38 of this subchapter B, and information on exchange/sale authority can be found in part 102–39 of this subchapter B.

§ 102–34.305 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

(a) SF 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 § 102–34.305(a)(2): Do not use SF 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 and motor vehicles that are damaged beyond repair in crashes and intended to be sold as salvage only. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip—Sale of Government Personal Property, and SF 114C, Sale of Government Property-Bid and Award.

(b) SF 97 is optional for foreign fleet motor vehicles because foreign governments may require the use of other forms.

NOTE TO § 102–34.305: The original SF 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.

§ 102–34.310 How do we distribute the completed Standard Form 97?

SF 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; and

(d) One copy under owning agency directives.

Subpart I—Motor Vehicle Fueling

§ 102–34.315 How do we obtain fuel for Government motor vehicles?

You may obtain fuel for Government motor vehicles by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency, if permitted by your agency. You must use the method prescribed by GSA Fleet to obtain fuel for vehicles leased from GSA fleet.

§ 102–34.320 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 may be deducted from fuel purchases by the fleet charge card services contractor before your agency is billed; otherwise you may need to request reimbursement from each State to which taxes were paid. 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: GSA SmartPay® (QMB), 2200 Crystal Drive, Arlington, VA 22202.

(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.

NOTE TO § 102–34.320: OMB Circular A–123, Appendix B, contains additional specific guidance on the management, issuance, and usage of Government charge cards. The Appendix B guidance consolidates and updates current Governmentwide charge card program requirements and guidance issued by the Office of Management and Budget, GSA, Department of the Treasury, and other Federal agencies. Appendix B provides a single document to incorporate changes, new guidance, or amendments to existing guidance, and establishes minimum requirements and suggested best practices for Government charge card programs that may be supplemented by individual agency policy procedures.

§ 102–34.325 What type of fuel do I use in Government motor vehicles?

(a) Use the minimum grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling Government motor vehicles, unless a higher grade of fuel is all that is available locally.

(b) Use unleaded gasoline in all foreign fleet motor vehicles designed to operate on gasoline 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.

(c) You must use alternative fuels in alternative fuel motor vehicles to the fullest extent possible as directed by regulations issued by the Department of Energy implementing the Energy Policy Act and related Executive Orders.

Subpart J—Federal Fleet Report

§ 102–34.330 What is the Federal Fleet Report?

The Federal Fleet Report (FFR) is an annual summary of Federal fleet statistics based upon fleet composition at the end of each fiscal year and vehicle use and cost during the fiscal year. The FFR is compiled by GSA from information submitted by Federal agencies. The FFR is designed to provide essential statistical data for worldwide Federal motor vehicle fleet operations. Review of the report assists Government agencies, including GSA, in evaluating the effectiveness of the operation and management of individual fleets to determine whether vehicles are being utilized properly and to identify high cost areas where fleet expenses can be reduced. The FFR is posted on GSA's Motor Vehicle Management Policy Internet Web site (*http://www.gsa.gov/vehiclepolicy*).

§ 102–34.335 How do I submit information to the General Services Administration (GSA) for the Federal Fleet Report (FFR)?

(a) Annually, agencies must submit to GSA the information needed to produce the FFR through the Federal Automotive Statistical Tool (FAST), an Internet-based reporting tool. To find out how to submit motor vehicle data to GSA through FAST, consult the instructions from your agency fleet manager and read the documentation at *http://fastweb.inel.gov/*.

(b) Specific reporting categories, by agency, included in the FFR are—

(1) Inventory;

(2) Acquisitions;

(3) Operating costs;

(4) Miles traveled; and

(5) Fuel used.

NOTE TO § 102–34.335: The FAST system is also used by agency Fleet Managers to provide the Department of Energy with information required by the Energy Policy Act and related Executive Orders. In addition, the Office of Management and Budget (OMB) requires agency Fleet Managers and budget officers to submit annual agency motor vehicle budgeting information to OMB through FAST (see OMB Circular A–11, Preparation, Submission, and Execution of the Budget).

§ 102–34.340 Do we need a fleet management information system?

Yes, you must have a fleet management information system at the department or agency level that —

(a) Identifies and collects accurate inventory, cost, and use data that covers the complete lifecycle of each motor vehicle (acquisition, operation, maintenance, and disposal); and

(b) Provides the information necessary to satisfy both internal and external reporting requirements, including:

(1) Cost per mile;

(2) Fuel costs for each motor vehicle; and

(3) Data required for FAST (see § 102–34.335).

§ 102–34.345 What records do we need to keep?

You are responsible for developing and keeping adequate accounting and reporting procedures for Government motor vehicles. These will ensure accurate recording of inventory, cost, and operational data needed to manage and control motor vehicles, and will satisfy reporting requirements. You must also comply with the General Records Schedules issued by the National Archives and Records Administration (*http://www.archives.gov*).

Subpart K—Forms

§ 102–34.350 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

Sec.
102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?
102–35.10 How are these regulations for the disposal of personal property organized?
102–35.15 What are the goals of GSA's personal property regulations?
102–35.20 What definitions apply to GSA's personal property regulations?
102–35.25 What management reports must we provide?
102–35.30 What actions must I take or am I authorized to take regardless of the property disposition method?

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 72 FR 10085, Mar. 7, 2007, unless otherwise noted.

§ 102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

The General Services Administration's personal property disposal regulations are contained in this part and in parts 102–36 through 102–42 of this subchapter B as well as in parts 101–42 and 101–45 of the Federal Property Management Regulations (FPMR)(41 CFR parts 101–42 and 101–45). With two exceptions, these regulations cover the disposal of personal property under the custody and control of executive agencies located in the United States, the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. The exceptions to this coverage are part 102–39 of this subchapter B, which applies to the replacement of all property owned by executive agencies worldwide using the exchange/sale authority, and §§ 102–36.380 through 102–36.400, which apply to the disposal of excess property located in countries and areas not listed in this subpart, i.e., foreign excess personal property. The legislative and judicial branches are encouraged to follow these provisions for property in their custody and control.

§ 102–35.10 How are these regulations for the disposal of personal property organized?

The General Services Administration (GSA) has divided its regulations for the disposal of personal property into the following program areas:

(a) Disposition of excess personal property (part 102–36 of this subchapter B).

(b) Donation of surplus personal property (part 102–37 of this subchapter B).

(c) Sale of surplus personal property (part 102–38 of this subchapter B).

(d) Replacement of personal property pursuant to the exchange/sale authority (part 102–39 of this subchapter B).

(e) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 102–41 of this subchapter B).

(f) Utilization, donation, and disposal of foreign gifts and decorations (part 102–42 of this subchapter B).

(g) Utilization and disposal of hazardous materials and certain categories of property (part 101–42 of the Federal Property Management Regulations (FPMR), 41 CFR part 101–42).

§ 102–35.15 What are the goals of GSA's personal property regulations?

The goals of GSA's personal property regulations are to:

(a) Improve the identification and reporting of excess personal property;

(b) Maximize the use of excess property as the first source of supply to minimize expenditures for the purchase of new property, when practicable;

NOTE TO §102–35.15(*b*): If there are competing requests among Federal agencies for excess property, preference will be given to agencies where the transfer will avoid a new Federal procurement. A transfer to an agency where the agency will provide the property to a non-Federal entity for the non-Federal entity's use will be secondary to Federal use.

(c) Achieve maximum public benefit from the use of Government property through the donation of surplus personal property to State and local public agencies and other eligible non-Federal recipients;

(d) Obtain the optimum monetary return to the Government for surplus personal property sold and personal property sold under the exchange/sale authority; and

(e) Reduce management and inventory costs by appropriate use of the abandonment/destruction authority to dispose of unneeded personal property that has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated sales proceeds (see FMR §§102–36.305 through 102–36.330).

§102–35.20 What definitions apply to GSA's personal property regulations?

The following are definitions of, or cross-references to, some key terms that apply to GSA's personal property regulations in the FMR (CFR parts 102–36 through 102–42). Other personal property terms are defined in the sections or parts to which they primarily apply.

Accountable Personal Property includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property.

Accountability means the ability to account for personal property by providing a complete audit trail for property transactions from receipt to final disposition.

Acquisition cost means the original purchase price of an item.

Capitalized Personal Property includes property that is entered on the agency's general ledger records as a major investment or asset. An agency must determine its capitalization thresholds as discussed in Financial Accounting Standard Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 6 Accounting for Property, Plant and Equipment, Chapter 1, paragraph 13.

Control means the ongoing function of maintaining physical oversight and surveillance of personal property throughout its complete life cycle using various property management tools and techniques taking into account the environment in which the property is located and its vulnerability to theft, waste, fraud, or abuse.

Excess personal property (see §102–36.40 of this subchapter B).

Exchange/sale (see §102–39.20 of this subchapter B).

Executive agency (see §102–36.40 of this subchapter B).

Federal agency (see §102–36.40 of this subchapter B).

Foreign gifts and decorations (for the definition of relevant terms, see §102–42.10 of this subchapter B).

Forfeited property (see §102–41.20 of this subchapter B).

Inventory includes a formal listing of all accountable property items assigned to an agency, along with a formal process to verify the condition, location, and quantity of such items. This term may also be used as a verb to indicate the actions leading to the development of a listing. In this sense, an inventory must be conducted using an actual physical count, electronic means, and/or statistical methods.

National property management officer means an official, designated in accordance with §102–36.45(b) of this subchapter B, who is responsible for ensuring effective acquisition, use, and disposal of excess property within your agency.

Personal property (see §102–36.40 of this subchapter B).

Property management means the system of acquiring, maintaining, using and disposing of the personal property of an organization or entity.

Seized property means personal property that has been confiscated by a

Federal agency, and whose care and handling will be the responsibility of that agency until final ownership is determined by the judicial process.

Sensitive Personal Property includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs.

Surplus personal property (see § 102–37.25 of this subchapter B).

Utilization means the identification, reporting, and transfer of excess personal property among Federal agencies.

§ 102–35.25 What management reports must we provide?

(a) There are three reports that must be provided. The report summarizing the property provided to non-Federal recipients and the report summarizing exchange/sale transactions (see §§ 102–36.295 and 102–39.75 respectively of this subchapter B) must be provided every year (negative reports are required). In addition, if you conduct negotiated sales of surplus personal property valued over $5,000 in any year, you must report this transaction in accordance with § 102–38.115 (negative reports are not required for this report).

(b) The General Services Administration (GSA) may request other reports as authorized by 40 U.S.C. 506(a)(1)(A).

§ 102–35.30 What actions must I take or am I authorized to take regardless of the property disposition method?

Regardless of the disposition method used:

(a) You must maintain property in a safe, secure, and cost-effective manner until final disposition.

(b) You have authority to use the abandonment/ destruction provisions at any stage of the disposal process (see §§ 102–36.305 through 102–36.330 and § 102–38.70 of this subchapter B).

(c) You must implement policies and procedures to remove sensitive or classified information from property prior to disposal. Agency-affixed markings should be removed, if at all possible, prior to personal property permanently leaving your agency's control.

(d) Government-owned personal property may only be used as authorized by your agency. Title to Government-owned personal property cannot be transferred to a non-Federal entity unless through official procedures specifically authorized by law.

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?
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?

NON-APPROPRIATED 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?
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?
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?
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. 121(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 121(c) of title 40, United States Code, authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under subtitle I of title 40. Section 521 of title 40 authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

[71 FR 53571, Sept. 12, 2006]

§ 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, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

§ 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 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.

Title 40 of the United States Code 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 102–38 of this chapter. 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 sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

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 is property not excess to the needs of the holding agency but eligible for replacement, which is exchanged or sold under the provisions of part 102–39 of this chapter 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).

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, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and 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.

GSAXcess® is GSA's website for reporting, searching and selecting excess personal property. For information on using GSAXcess®, access *http://www.gsaxcess.gov*.

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.

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.

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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

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.

(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 Title 40 of the United States Code and the Federal Management Regulation (41 CFR chapter 102), and any other applicable statutes and regulations when performing these functions.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

§ 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, GSAXcess®, to facilitate the reporting and transferring of excess personal property.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53571, Sept. 12, 2006]

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 GSAXcess® 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 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 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 GSAXcess®, GSA's website for searching and selecting excess personal property. For information on GSAXcess®, access *http://www.gsaxcess.gov*.

(b) Contact or submit want lists to regional GSA Personal Property Management offices.

(c) Check any available holding agency websites.

(d) Conduct on-site screening at various federal facilities.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 onsite?

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:

(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 (GSAXcess®) 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, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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.

(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?

Normally, you have 15 calendar days from the date of GSA allocation to pick up the excess personal property for transfer, and you are responsible for scheduling and coordinating the property removal with the holding agency. If additional removal time is required, you are responsible for requesting such additional removal time.

[74 FR 41060, Aug. 14, 2009]

§ 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, 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 non-appropriated 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.

NON-APPROPRIATED FUND ACTIVITIES

§ 102–36.165 Do we retain title to excess personal property furnished to a non-appropriated fund activity within our agency?

Yes, title to excess personal property furnished to a non-appropriated 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 non-appropriated 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 non-appropriated fund activities?

Property purchased by a non-appropriated fund activity is not federal property. A non-appropriated fund activity has the option of making its 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);

(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 102–37 of this chapter, 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 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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) Non-appropriated fund property (see § 102–36.165).

(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 102–75 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102–36.230 Where do we send the reports of excess personal property?

(a) You must direct electronic submissions of excess personal property to GSAXcess® 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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).

(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.

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.

(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.

(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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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, Office of Travel, Transportation, and Asset Management (MT), 1800 F Street, NW, Washington, DC 20405, within 90 calendar days after the close of each fiscal 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, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and 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).

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 102–37 of this chapter) 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 102–37 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 102–38 of this chapter.

§ 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;

(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) Data plate 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 reassembly 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 the Department of Defense (DOD), as follows:

Category of aircraft	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 data plate to GSA Property Management Branch (9FBP), San Francisco, CA 94102–3434 prior to releasing the aircraft to the authorized recipient. GSA will forward the data plates 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 Office of Travel, Transportation, and Asset Management (MT), GSA, 1800 F Street, NW, Washington, DC 20405. For additional instructions on reporting to FAIRS, see part 102–33 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 102–33, subpart D, of this chapter. 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 102–36.350 How do we identify a FSCAP?

Any aircraft part designated as FSCAP is assigned an alpha Criticality 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 102–33 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 40 U.S.C. 555, 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 (Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) and Executive Order 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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.

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 chapter 7 of title 40 of the United States Code.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 40 U.S.C. 527. Abandonment, destruction or donation actions must also comply with the laws of the country in which the property is located.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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 40 U.S.C. 521–529, 549, and 551, the Federal agency, State agency, or donee receiving the property is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 102–42 of this chapter.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

§ 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, DC

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.

§ 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, Property Management Division (FBP), Washington, DC 20406, for possible transfer, donation or sale in accordance with the provisions of part 102–42 of this chapter.

[71 FR 53572, Sept. 12, 2006]

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, 732 North Capitol Street, NW, Washington, DC 20401. If GPO has no requirement for the property, you must then submit the report to GSA.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 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 102–39 of this chapter. 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.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 40 U.S.C. 548, 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, or submarines.

[65 FR 31218, May 16, 2000, as amended at 71 FR 53572, Sept. 12, 2006]

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 nonprofit 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 nonprofit 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?

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?
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?

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?

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 Who is responsible for costs associated with the donation?
APPENDIX A TO PART 102–37—MISCELLANEOUS DONATION STATUTES
APPENDIX B TO PART 102–37—ELEMENTS OF A STATE PLAN OF OPERATION
APPENDIX C TO PART 102–37—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

AUTHORITY: 40 U.S.C. 549 and 121(c).

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?

Section 549 of title 40, United States Code, gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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.

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.

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 40 U.S.C. 549.

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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

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.

(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.

(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:

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 102–38 of this chapter. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 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 property 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.

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;

(c) Set aside or hold surplus property from further disposal upon notification of a pending transfer for donation; (If GSA does not notify you of a pending transfer within 5 calendar days following the surplus release date, you may proceed with the sale or other authorized disposal of the property.)

(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.

[67 FR 2584, Jan. 18, 2002, as amended at 67 FR 78732, Dec. 26, 2002]

§ 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. 555.

(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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

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 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 40 U.S.C. 549(e) and set forth in the plan.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102–37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of 40 U.S.C. 549(e) 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 title 40 of the United States Code and the requirements of this part.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 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;

(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 40 U.S.C. 549 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 40 U.S.C. 549 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.

(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 parts 101–4, subparts 101–6.2, and 101–8.3 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.*).

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 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 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.

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 determine 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.

§ 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 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 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 549(f) of title 40, United States Code 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 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).

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 distribution 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 $500,000 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 Government Accountability 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 102–37.355 What obligations does a SASP have to ensure that donees meet Circular A–133 requirements?

SASPs, if they donate $500,000 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 $500,000 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

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) Section 549(d) of title 40, United States Code 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) Section 549(c)(3) of title 40, United States Code 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.

(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.

(17) Historic light stations as defined under section 308(e)(2) of the National Historic Preservation Act (16 U.S.C. 470w–7(e)(2)), including a historic light station conveyed under subsection (b) of that section, notwithstanding the number of hours that the historic light station is open to the public.

(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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006; 72 FR 12572, Mar. 16, 2007]

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 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 nonprofit 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 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.

(b) *Educational and public health purposes, including related research.* A nonprofit 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 nonprofit 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 nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), section 122 of title 40, United States Code, 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 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 102–33, subpart D, of this chapter.
(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, Firearms and Explosives (ATF), Department of the Justice, in order to acquire the property. Include the ATF 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 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.

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

(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 49 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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?

Section 551 of title 40, United States Code authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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?

Section 527 of title 40, United States Code 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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006]

§ 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 hazardous 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 nonprofit entities.

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.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(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. (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 TO PART 102–37—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 universities, 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.

Historic light station means a historic light station as defined under section 308(e)(2) of the National Historic Preservation Act 16 U.S.C. 470w–7(e)2), including a historic light station conveyed under subsection (b) of that section, notwithstanding the number of hours that the historic light station is open to the public.

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/admins/finaid/accred*)

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:

(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.

[67 FR 2584, Jan. 18, 2002, as amended at 71 FR 23868, Apr. 25, 2006; 72 FR 12572, Mar. 16, 2007]

PART 102–38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

102–38.5 What does this part cover?

102–38.10 What is the governing authority for this part?

102–38.15 Who must comply with these sales provisions?

102–38.20 Must an executive agency follow the regulations of this part when selling all personal property?

102–38.25 To whom do ''we'', ''you'', and their variants refer?

102–38.30 How does an executive agency request a deviation from the provisions of this part?

DEFINITIONS

102–38.35 What definitions apply to this part?

RESPONSIBILITIES

102–38.40 Who may sell personal property?

102–38.45 What are an executive agency's responsibilities in selling personal property?

102–38.50 What must we do when an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

102–38.55 What must we do when selling personal property?

102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

102–38.65 What if we are or the holding agency is notified of a Federal requirement for surplus personal property before the sale is complete?

102–38.70 May the holding agency abandon or destroy personal property either prior to or after trying to sell it?

Subpart B—Sales Process

METHODS OF SALE

102–38.75 How may we sell personal property?

102–38.80 Which method of sale should we use?

COMPETITIVE SALES

102–38.85 What is a sealed bid sale?

102–38.90 What is a spot bid sale?

102–38.95 What is an auction?

NEGOTIATED SALES

102–38.100 What is a negotiated sale?

102–38.105 Under what conditions may we negotiate sales of personal property?

102–38.110 Who approves our determinations to conduct negotiated sales?

102–38.115 What are the specific reporting requirements for negotiated sales?

102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

102–38.125 May we sell personal property at fixed prices to State agencies?

ADVERTISING

102–38.130 Must we publicly advertise sales of Federal personal property?

102–38.135 What constitutes a public advertisement?

102–38.140 What must we include in the public notice on sale of personal property?

PRE-SALE ACTIVITIES

102–38.145 Must we allow for inspection of the personal property to be sold?
102–38.150 How long is the inspection period?

OFFER TO SELL

102–38.155 What is an offer to sell?
102–38.160 What must be included in the offer to sell?
102–38.165 Are the terms and conditions in the offer to sell binding?

Subpart C—Bids

BUYER ELIGIBILITY

102–38.170 May we sell Federal personal property to anyone?
102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?
102–38.180 May we sell Federal personal property to a Federal employee?
102–38.185 May we sell Federal personal property to State or local governments?

ACCEPTANCE OF BIDS

102–38.190 What is considered a responsive bid?
102–38.195 Must bidders use authorized bid forms?
102–38.200 Who may accept bids?
102–38.205 Must we accept all bids?
102–38.210 What happens when bids have been rejected?
102–38.215 When may we disclose the bid results to the public?
102–38.220 What must we do when the highest bids received have the same bid amount?
102–38.225 What are the additional requirements in the bid process?

BID DEPOSITS

102–38.230 Is a bid deposit required to buy personal property?
102–38.235 What types of payment may we accept as bid deposits?
102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

LATE BIDS

102–38.245 Do we consider late bids for award?
102–38.250 How do we handle late bids that are not considered?

MODIFICATION OR WITHDRAWAL OF BIDS

102–38.255 May we allow a bidder to modify or withdraw a bid?

MISTAKES IN BIDS

102–38.260 Who makes the administrative determinations regarding mistakes in bids?
102–38.265 Must we keep records on administrative determinations?
102–38.270 May a bidder protest the determinations made on sales of personal property?

Subpart D—Completion of Sale

AWARDS

102–38.275 To whom do we award the sales contract?
102–38.280 What happens when there is no award?

TRANSFER OF TITLE

102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

PAYMENTS

102–38.290 What types of payment may we accept?

DISPOSITION OF PROCEEDS

102–38.295 May we retain sales proceeds?
102–38.300 What happens to sales proceeds that neither we nor the holding agency are authorized to retain, or that are unused?

DISPUTES

102–38.305 How do we handle disputes involved in the sale of Federal personal property?
102–38.310 Are we required to use the Disputes clause in the sale of personal property?
102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

Subpart E—Other Governing Statutes

102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

ANTITRUST REQUIREMENTS

102–38.325 What are the requirements pertaining to antitrust laws?

Subpart F—Reporting Requirements

102–38.330 Are there any reports that we must submit to the General Services Administration?
102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Subpart G—Provisions for State and Local Governments

102–38.340 How may we sell personal property to State and local governments?
102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?
102–38.350 Are there special provisions for State and local governments regarding negotiated sales?
102–38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Subpart H—Implementation of the Federal Asset Sales Program

102–38.360 What must an executive agency do to implement the eFAS program?
102–38.365 Is a holding agency required to report property in ''scrap'' condition to its selected SC?
102–38.370 What does a holding agency do with property which cannot be sold by its SC?

AUTHORITY: 40 U.S.C. 545 and 40 U.S.C. 121(c).

SOURCE: 68 FR 51421, Aug. 26, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 102–38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including—

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

NOTE TO § 102–38.5: You must follow additional guidelines in 41 CFR parts 101–42 and 101–45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102–33 of this chapter.

§ 102–38.10 What is the governing authority for this part?

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

§ 102–38.15 Who must comply with these sales provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102–38.20 Must an executive agency follow the regulations of this part when selling all personal property?

Generally, yes, an executive agency must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions;

(d) Foreign excess personal property is exempt from these provisions; and

(e) Agency sales procedures which are mandated or authorized under laws other than Title 40 United States Code are exempt from this part.

[73 FR 20802, Apr. 17, 2008]

§ 102–38.25 To whom do "we", "you", and their variants refer?

Unless otherwise indicated, use of pronouns ''we'', ''you'', and their variants throughout this part refer to the Sales Center responsible for the sale of the property.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20802, Apr. 17, 2008]

§ 102–38.30 How does an executive agency request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

However, waivers which are distinct from the standard deviation process and specific to the requirements of the Federal Asset Sales (eFAS) initiative milestones (see subpart H of this part) are addressed in § 102–38.360.

[73 FR 20802, Apr. 17, 2008]

DEFINITIONS

§ 102–38.35 What definitions apply to this part?

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Federal Asset Sales (eFAS) refers to the e-Government initiative to improve the way the Federal Government manages and sells its real and personal property assets. Under this initiative, only an agency designated as a Sales Center (SC) may sell Federal property, unless a waiver has been granted by the *eFAS* Planning Office in accordance with § 102–38.360. The *eFAS* initiative is governed and given direction by the *eFAS* Executive Steering Committee (ESC), with GSA as the managing partner agency.

Federal Asset Sales Planning Office (eFAS Planning Office) refers to the office within GSA assigned responsibility for managing the eFAS initiative.

Holding Agency refers to the agency in possession of personal property eligible for sale under this part.

Identical bids means bids for the same item of property having the same total price.

Migration Plan refers to the document a holding agency prepares to summarize its choice of SC(s) and its plan for migrating agency sales to the SC(s). The format for this document is determined by the eFAS ESC.

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:

(1) Battleships;
(2) Cruisers;
(3) Aircraft carriers;
(4) Destroyers; and
(5) Submarines.

Sales Center (SC) means an agency that has been nominated, designated, and approved by the eFAS ESC and the Office of Management and Budget (OMB) as an official sales solution for Federal property. The criteria for becoming an *SC*, the selection process, and the ongoing *SC* requirements for posting property for sale to the eFAS portal and reporting sales activity and performance data are established by the eFAS ESC and can be obtained from the eFAS Planning Office at GSA. The eFAS Planning Office may be contacted via e-mail at *FASPlanningOffice@gsa.gov*. *SCs* may utilize (and should consider) private sector entities as well as Government activities and are expected to provide exemplary asset management solutions in one or more of the following areas: on-line sales; off-line sales; and sales-related value added services. *SCs* will enter into agreements with holding agencies to sell property belonging to these holding agencies. A holding agency may employ the services of multiple *SCs* to maximize efficiencies.

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 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20802, Apr. 17, 2008]

RESPONSIBILITIES

§ 102–38.40 Who may sell personal property?

An executive agency may sell personal property (including on behalf of another agency when so requested) only if it is a designated Sales Center (SC), or if the agency has received a waiver from the eFAS Planning Office. An SC may engage contractor support

to sell personal property. Only a duly authorized agency official may execute the sale award documents and bind the United States.

[73 FR 20802, Apr. 17, 2008]

§ 102–38.45 What are an executive agency's responsibilities in selling personal property?

An executive agency's responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.50 What must we do when an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, the agency must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer, the buyer's designee, or an SC. The holding agency may request the SC to perform care and handling services in accordance with their agreement. When specified in the terms and conditions of sale, the SC may charge the buyer costs for storage when the buyer is delinquent in removing the property. The amount so charged may only be retained by the holding agency performing the care and handling in accordance with § 102–38.295.

[73 FR 20803, Apr. 17, 2008]

§ 102–38.65 What if we are or the holding agency is notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you or the holding agency must make the property available for transfer to the

maximum extent practicable and prior to transfer of title to the property.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.70 May the holding agency abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, the holding agency may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

(1) The personal property has no commercial value; or

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

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

Subpart B—Sales Process

METHODS OF SALE

§ 102–38.75 How may we sell personal property?

(a) You will sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be conducted in a manner most advantageous to the Government. When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

(1) Inspection.

(2) Condition and location of property.

(3) Eligibility of bidders.

(4) Consideration of bids.

(5) Bid deposits and payments.

(6) Submission of bids.

(7) Bid price determination.

(8) Title.

(9) Delivery, loading, and removal of property.

(10) Default, returns, or refunds.

(11) Modifications, withdrawals, or late bids.

(12) Requirements to comply with applicable laws and regulations. 41 CFR part 101–42 contains useful guidance addressing many of these requirements. You should also contact your agency's Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.

(13) Certificate of independent price determinations.

(14) Covenant against contingent fees.

(15) Limitation on Government's liability.

(16) Award of contract.

(b) Standard government forms (e.g., Standard Form 114 series) may be used to document terms and conditions of the sale.

(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102–38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

(1) Type and quantity of property;

(2) Location of property;

(3) Potential market;

(4) Cost to prepare and conduct the sale;

(5) Available facilities; and

(6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

COMPETITIVE SALES

§ 102–38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102–38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102–38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

NEGOTIATED SALES

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102–38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed $15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, e.g., sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102–38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—

(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of $15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed

price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of $5,000. You may submit the report electronically or manually (see § 102–38.330).

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may conduct negotiated sales of personal property at fixed prices (fixed price sale) under this section when:

(a) The items are authorized to be sold at fixed price by the Administrator of General Services, as reflected in GSA Bulletin FMR B–10 (located at *http://www.gsa.gov/fmrbulletin*). You may also contact the GSA Office of Travel, Transportation, and Asset Management (MT) at the address listed in § 102–38.115 to determine which items are on this list of authorized items;

(b) The head of your agency, or designee, determines in writing that such sales serve the best interest of the Government. When you are selling property on behalf of a holding agency, you must consult with the holding agency in determining whether a fixed price sale meets this criterion; and

(c) You must publicize such sales to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You or the holding agency may also establish additional terms and conditions that must be met by the successful purchaser in accordance with § 102–38.75.

[73 FR 20803, Apr. 17, 2008]

§ 102–38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, see subpart G of this part.

ADVERTISING

§ 102–38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102–38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—

(a) Date, time and location of sale;

(b) General categories of property being offered for sale;

(c) Inspection period;

(d) Method of sale (i.e., spot bid, sealed bid, auction);

(e) Selling agency; and

(f) Who to contact for additional information.

PRE-SALE ACTIVITIES

§ 102–38.145 Must we allow for inspection of the personal property to be sold?

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection. If inspection is restricted to

electronic inspections only, due to unusual circumstances prohibiting physical inspection, you must notify your General Services Administration Regional Personal Property Office in writing, with the circumstances surrounding this restriction at least 3 days prior to the start of the screening period.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should also consider such factors as the circumstances of sale, volume of property, type of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspections.

OFFER TO SELL

§ 102–38.155 What is an offer to sell?

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include—

(a) Sale date and time;

(b) Method of sale;

(c) Description of property being offered for sale;

(d) Selling agency;

(e) Location of property;

(f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and

(h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is accepted.

Subpart C—Bids

BUYER ELIGIBILITY

§ 102–38.170 May we sell Federal personal property to anyone?

Generally, you may sell Federal personal property to anyone of legal age. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?

Refer to the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at *http://epls.arnet.gov*. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

[68 FR 51421, Aug. 26, 2003; 68 FR 53219, Sept. 9, 2003]

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. However, unless allowed by Federal or agency regulations, employees having nonpublic information regarding property offered for sale may not participate in that sale (see 5 CFR 2635.703). For purposes of this section, the term ''Federal employee'' also applies to an immediate member of the employee's household.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sales to State or local governments are contained in subpart G of this part.

ACCEPTANCE OF BIDS

§ 102–38.190 What is considered a responsive bid?

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of the submission. Only responsive bids may be considered for award.

§ 102–38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if—

(a) The bidder accepts all the terms and conditions of the offer to sell; and

(b) Award of the bid would result in a binding contract.

§ 102–38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

§ 102–38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102–38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102–38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot bid sale or auction, all bids are disclosed as they are submitted. No information other than names may be disclosed regarding the bidder(s).

§ 102–38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (e.g., timely removal of the property, terms of payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice or your agency's Office of the Inspector General.

BID DEPOSITS

§ 102–38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102–38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, see § 102–2.135 of subchapter A.

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, you should return the deposit bond to the bidder.

LATE BIDS

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

MODIFICATION OR WITHDRAWAL OF BIDS

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

MISTAKES IN BIDS

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR 14.407, Mistakes in Bids (48 CFR 14.407). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority, or a limited number of authorities in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must—

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General when requested.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

AWARDS

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this subchapter B.

TRANSFER OF TITLE

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional

certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

PAYMENTS

§ 102–38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, e.g., cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

DISPOSITION OF PROCEEDS

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds, in accordance with your agreement with the holding agency, equal to your direct costs and reasonably related indirect costs (including your share of the Governmentwide costs to support the eFAS Internet portal and Governmentwide reporting requirements) incurred in selling personal property.

(b) A holding agency may retain that portion of the sales proceeds equal to its costs of care and handling directly related to the sale of personal property by the SC (e.g., shipment to the SC, storage pending sale, and inspection by prospective buyers).

(c) After accounting for amounts retained under paragraphs (a) and (b) of this section, as applicable, a holding agency may retain the balance of proceeds from the sale of its agency's personal property when—

(1) It has the statutory authority to retain all proceeds from sales of personal property;

(2) The property sold was acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) The property sold was surplus Government property that was in the custody of a contractor or subcontractor, and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) The property sold was related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

[73 FR 20803, Apr. 17, 2008]

§ 102–38.300 What happens to sales proceeds that neither we nor the holding agency are authorized to retain, or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

DISPUTES

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell

and contracts for the sale of personal property.

§ 102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651–658).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

ANTITRUST REQUIREMENTS

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of $3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property. You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

[68 FR 51421, Aug. 26, 2003; 68 FR 53219, Sept. 9, 2003]

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to the General Services Administration?

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report*. Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of $5,000 (see § 102–38.115). For each negotiated sale that meets this criterion, provide the following:

(1) Description of the property (including quantity and condition).

(2) Acquisition cost and date (if not known, estimate and so indicate).

(3) Estimated fair market value (including date of estimate and name of estimator).

(4) Name and address of purchaser.

(5) Date of sale.

(6) Gross and net sales proceeds.

(7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report*. Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (see § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

(a) Competitive sale to the public;

(b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or

(c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102–38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Yes, State Agencies for Surplus Property (SASPs) must follow the regulations in this part when conducting sales on behalf of the General Services Administration of Government personal property in their custody.

Subpart H—Implementation of the Federal Asset Sales Program

SOURCE: 73 FR 20803, Apr. 17, 2008, unless otherwise noted.

§ 102–38.360 What must an executive agency do to implement the eFAS program?

(a) An executive agency must review the effectiveness of all sales solutions, and compare them to the effectiveness (e.g., cost, level of service, and value added services) of the eFAS SCs. Agencies should give full consideration to sales solutions utilizing private sector entities, including small businesses, that are more effective than the solutions provided by any eFAS-approved SC. If the agency decides that there are more effective sales solutions than those solutions offered by the eFAS SCs, the agency must request a waiver from the milestones using the procedures and forms provided by the eFAS Planning Office. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient. Waiver approval will be coordinated with GSA's Office of Travel, Transportation, and Asset Management. Contact the eFAS Planning Office at *FASPlanningOffice@gsa.gov* to obtain these procedures and forms.

(b) An approved waiver for meeting one of the eFAS milestones does not automatically waive all milestone requirements. For example, if an agency receives a waiver to the migration milestone, the agency must still (1) post asset information on the eFAS Web site and (2) provide post-sales data to the eFAS Planning Office in accordance with the content and format requirements developed by the eFAS ESC, unless waivers to these milestones are also requested and approved. Waivers to the eFAS milestones will not be permanent. Upon expiration of the waiver to the migration milestone, an agency must either migrate to an approved SC, or serve as a fully functioning SC, as soon as practicable. See the definition of a ''Sales Center'' at § 102–38.35 for an overview of how agency sales solutions become SCs.

(c) An agency which receives a waiver from the eFAS milestones must comply with subparts A through G of this part as if it were an SC.

(d) An executive agency must comply with all eFAS milestones approved by OMB including those regarding the

completion of an agency-wide sales migration plan, the reporting of pre- and post-sales data, and the migration to approved SCs unless a waiver has been submitted by the agency and approved by the eFAS Planning Office. The eFAS milestones are available for viewing at *http://www.gsa.gov/govsalesmilestones*.

§ 102–38.365 Is a holding agency required to report property in "scrap" condition to its selected SC?

No. Property which has no value except for its basic material content (scrap material) may be disposed of by the holding agency by sale or as otherwise provided in § 102–38.70. However, the holding agency should consult the SC(s) selected by the holding agency as to the feasibility of selling the scrap material. Agencies selling scrap property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

§ 102–38.370 What does a holding agency do with property which cannot be sold by its SC?

All reasonable efforts must be afforded the SC to sell the property. If the property remains unsold after the time frame agreed to between the SC and the holding agency, the holding agency may dispose of the property by sale or as otherwise provided in § 102–38.70. The lack of public interest in buying the property is evidence that the sales proceeds would be minimal. Agencies selling property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Subpart A—General

Sec.
102–39.5 What is the exchange/sale authority?
102–39.10 What does this part cover?
102–39.15 How are the terms "I" and "you" used in this part?
102–39.20 What definitions apply to this part?
102–39.25 Which exchange/sale provisions are subject to deviation?
102–39.30 How do I request a deviation from this part?

Subpart B—Exchange/Sale Considerations

102–39.35 When should I consider using the exchange/sale authority?
102–39.40 Why should I consider using the exchange/sale authority?
102–39.45 When should I not use the exchange/sale authority?
102–39.50 How do I determine whether to do an exchange or a sale?
102–39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?
102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?
102–39.65 What conditions apply to the exchange/sale of personal property?

Subpart C—Exchange/Sale Methods and Reports

102–39.70 What are the exchange methods?
102–39.75 What are the sales methods?
102–39.80 What are the accounting requirements for the proceeds of sale?
102–39.85 What information am I required to report?

AUTHORITY: 40 U.S.C. 121(c); 40 U.S.C. 503.

SOURCE: 66 FR 48614, Sept. 21, 2001, unless otherwise noted.

Subpart A—General

§ 102–39.5 What is the exchange/sale authority?

The exchange/sale authority is a statutory provision, (40 U.S.C. 503), which states in part: "In acquiring personal property, an executive agency may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired."

[73 FR 50880, Aug. 29, 2008]

§ 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 101–33 and 101–42 of this title.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004]

§ 102–39.15 How are the terms "I" and "you" used in this part?

Use of pronouns ''I'' and ''you'' throughout this part refer to executive agencies.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 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 (sometimes known as rent).

Combat material means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

Excess property means any personal property under the control of any Federal agency that is no longer required for that agency's needs or responsibilities, as determined by the agency head or designee.

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 commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

Replacement means the process of acquiring personal property to be used in place of personal 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 personal property to be acquired.

Service Life Extension Program (SLEP) means the modification of a personal property item undertaken to extend the life of the item beyond that which was previously planned. SLEPs extend capital asset life by retrofit, major modification, remanufacturing, betterment, or enhancement.

Similar means the acquired item(s) and replaced item(s):

(1) Are identical; or

(2) Fall within a single Federal Supply Classification (FSC) Group of property (includes any and all forms of property within a single FSC Group); or

(3) Are parts or containers for similar end items; or

(4) Are designed or constructed for the same purpose (includes any and all forms of property regardless of the FSC Group to which they are assigned).

Surplus property means excess personal property not required for the needs of any Federal agency, as determined by GSA under part 102–37 of this chapter.

[66 FR 48614, Sept. 21, 2001, as amended at 73 FR 50880, Aug. 29, 2008]

§ 102–39.25 Which exchange/sale provisions are subject to deviation?

All of the provisions in this part are subject to deviation (upon presentation of adequate justification) except those mandated by statute. See the link on ''Exchange/Sale'' at *www.gsa.gov/personalpropertypolicy* for additional information on requesting deviations from this part.

[73 FR 50880, Aug. 29, 2008]

§ 102–39.30 How do I request a deviation from this part?

See part 102–2 of this chapter (41 CFR part 102–2) to request a deviation from the requirements of this part.

[73 FR 50880, Aug. 29, 2008]

Subpart B—Exchange/Sale Considerations

§ 102–39.35 When should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority when replacing personal property.

[73 FR 50880, Aug. 29, 2008]

§ 102–39.40 Why should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority to reduce the cost of replacement personal property. When you have personal property that is wearing out or obsolete and must be replaced, you should consider either exchanging or selling that property and using the exchange allowance or sales proceeds to offset the cost of the replacement personal property. Conversely, if you choose not to replace the property using the exchange/sale authority, you may declare it as excess and dispose of it through the normal disposal process as addressed in part 102–36 of this chapter. Keep in mind, however, that any net proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you. You may use the exchange/sale authority in the acquisition of personal property even if the acquisition is under a services contract, as long as the property acquired under the services contract is similar to the property exchanged or sold (e.g., for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

[73 FR 50880, Aug. 29, 2008]

§ 102–39.45 When should I not use the exchange/sale authority?

You should not use the exchange/sale authority if the exchange allowance or estimated sales proceeds for the property will be unreasonably low. You must either abandon or destroy such property, or declare the property excess, in accordance with part 102–36 of this chapter. Further, you must not use the exchange/sale authority if the transaction(s) would violate any other applicable statute or regulation.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102–39.50 How do I determine whether to do an exchange or a sale?

You must determine whether an exchange or sale will provide the greater return for the Government. When estimating the return under each method, consider all related administrative and overhead costs.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102–39.55 When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?

If you have property to replace which is eligible for exchange/sale, you should first, to the maximum extent practicable, solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

(1) Do so under terms mutually agreeable to you and the recipient.

(2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.

(3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

(b) State Agencies for Surplus Property (SASPs) known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price under the conditions specified at § 102–38.125 of this title. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

Unless a deviation is requested of and approved by GSA as addressed in part 102–2 of this chapter and the provisions of §§ 102–39.25 and 102–39.30, you must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

10 Weapons.

11 Nuclear ordnance.

42 Firefighting, rescue, and safety equipment.

44 Nuclear reactors (FSC Class 4470 only).

51 Hand tools.

54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).

68 Chemicals and chemical products, except medicinal chemicals.

84 Clothing, individual equipment, and insignia.

NOTE TO § 102–39.60(a): Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

(b) Materials in the National Defense Stockpile (50 U.S.C. 98–98h) or the 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) Property with a condition code of scrap, as defined at FMR 102–36.40, except:

(1) Property that had utility and value at the point in time when a determination was made to use the exchange/sale authority;

(2) Property that was otherwise eligible for exchange/sale, but was coded as scrap due to damage (e.g., accident or natural disaster); or

(3) Scrap gold for fine gold.

(f) Property that was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(g) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Department of Defense Demilitarization Office.

(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of § 102–33.370 of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

(1) Restriction on procurement of a commodity or commodities;

(2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(3) Contractual obligation.

(l) Vessels subject to 40 U.S.C. 548.

(m) Aircraft and aircraft parts, unless there is full compliance with all

exchange/sale provisions in part 102–33 of this chapter (41 CFR part 102–33).

[66 FR 48614, Sept. 21, 2001; 66 FR 51095, Oct. 5, 2001, as amended at 69 FR 11539, Mar. 11, 2004; 71 FR 20900, Apr. 24, 2006. Redesignated at 73 FR 50880, Aug. 29, 2008; 75 FR 24820, May 6, 2010; 76 FR 67372, Nov. 1, 2011]

§ 102–39.65 What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

(a) The property exchanged or sold is similar to the property acquired;

(b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;

(c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;

(d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and

(e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated with each exchange/sale transaction. At a minimum, the documentation must include:

(1) The FSC Group of the items exchanged or sold, and the items acquired;

(2) The number of items exchanged or sold, and the number of items acquired;

(3) The acquisition cost and exchange allowance or net sales proceeds of the items exchanged or sold, and the acquisition cost of the items acquired;

(4) The date of the transaction(s);

(5) The parties involved; and

(6) A statement that the transactions comply with the requirements of this part 102–39.

NOTE TO § 102–39.65: In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

[73 FR 50881, Aug. 29, 2008]

Subpart C—Exchange/Sale Methods and Reports

§ 102–39.70 What are the exchange methods?

Exchange of property may be accomplished by either of the following methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

[66 FR 48614, Sept. 21, 2001. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102–39.75 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in part 102–38 of this title, in the sale of property being replaced, except for the provisions of §§ 102–38.100 through 102–38.115 of this title regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed $500; or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of § 102–38.120 and 102–38.125 of this title.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004. Redesignated at 73 FR 50880, Aug. 29, 2008]

§ 102–39.80 What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was exchanged or sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

[73 FR 50881, Aug. 29, 2008, as amended at 75 FR 24820, May 6, 2010]

§ 102–39.85 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, Office of Travel, Transportation and Asset Management (MT), 1800 F Street, 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.

[66 FR 48614, Sept. 21, 2001, as amended at 71 FR 20900, Apr. 24, 2006. Redesignated at 73 FR 50880, Aug. 29, 2008]

PART 102–40 [RESERVED]

PART 102–41—DISPOSITION OF SEIZED, FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Sec.

Subpart A—General Provisions

102–41.5 What does this part cover?
102–41.10 To whom do ''we'', ''you'', and their variants refer?
102–41.15 How do we request a deviation from these requirements and who can approve it?

DEFINITIONS

102–41.20 What definitions apply to this part?

RESPONSIBILITY

102–41.25 Who retains custody and is responsible for the reporting, care, and handling of property covered by this part?
102–41.30 What is GSA's role in the disposition of property covered by this part?
102–41.35 Do we report to GSA all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not retained for official use?

Subpart B—Seized or Forfeited Personal Property

102–41.40 How is personal property forfeited?
102–41.45 May we place seized personal property into official use before the forfeiture process is completed?
102–41.50 May we retain forfeited personal property for official use?
102–41.55 Where do we send the reports for seized or forfeited personal property?
102–41.60 Are there special requirements in reporting seized or forfeited personal property to GSA?
102–41.65 What happens to forfeited personal property that is transferred or retained for official use?
102–41.70 Are transfers of forfeited personal property reimbursable?
102–41.75 May we retain the proceeds from the sale of forfeited personal property?

Subpart C—Voluntarily Abandoned Personal Property

102–41.80 When is personal property voluntarily abandoned?
102–41.85 What choices do I have for retaining or disposing of voluntarily abandoned personal property?

102–41.90 What happens to voluntarily abandoned personal property retained for official use?
102–41.95 Where do we send the reports for voluntarily abandoned personal property?
102–41.100 What information do we provide when reporting voluntarily abandoned personal property to GSA?
102–41.105 What happens to voluntarily abandoned personal property when reported to GSA?
102–41.110 Are transfers of voluntarily abandoned personal property reimbursable?
102–41.115 May we retain the proceeds received from the sale of voluntarily abandoned personal property?

Subpart D—Unclaimed Personal Property

102–41.120 How long must we hold unclaimed personal property before disposition?
102–41.125 What choices do I have for retaining or disposing of unclaimed personal property?
102–41.130 What must we do when we retain unclaimed personal property for official use?
102–41.135 How much reimbursement do we pay the former owner when he or she files a claim for unclaimed personal property that we no longer have?
102–41.140 When do we report to GSA unclaimed personal property not retained for official use?
102–41.145 Where do we send the reports for unclaimed personal property?
102–41.150 What special information do we provide on reports of unclaimed personal property?
102–41.155 Is unclaimed personal property available for transfer to another Federal agency?
102–41.160 May we retain the reimbursement from transfers of unclaimed personal property?
102–41.165 May we require reimbursement for the costs incurred in the transfer of unclaimed personal property?
102–41.170 Is unclaimed personal property available for donation?
102–41.175 May we sell unclaimed personal property?
102–41.180 May we retain the proceeds from the sale of unclaimed personal property?

Subpart E—Personal Property Requiring Special Handling

102–41.185 Are there certain types of forfeited, voluntarily abandoned, or unclaimed property that must be handled differently than other property addressed in this part?

FIREARMS

102–41.190 May we retain forfeited, voluntarily abandoned, or unclaimed firearms for official use?
102–41.195 How do we dispose of forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use?
102–41.200 Are there special disposal provisions for firearms that are seized and forfeited for a violation of the National Firearms Act?

FORFEITED DISTILLED SPIRITS, WINE, AND BEER

102–41.205 Do we report all forfeited distilled spirits, wine, and beer to GSA for disposal?

DRUG PARAPHERNALIA

102–41.210 What are some examples of drug paraphernalia?
102–41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?
102–41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State agency for surplus property (SASP)?
102–41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?
102–41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?
102–41.235 May we sell forfeited drug paraphernalia?

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 71 FR 41370, July 21, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 102–41.5 What does this part cover?

(a) This part covers the disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property under the custody of any Federal agency located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. Disposition of such personal property located elsewhere must be in accordance with holding agency regulations. Please see §102–36.380 of this subchapter B regarding the disposal of foreign excess. The General Services Administration (GSA) does not normally

accept responsibility for disposal of property located outside the United States and its territories. Additional guidance on disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property that requires special handling (e.g., firearms, hazardous materials) is contained in part 101–42 of this title. Additional guidance on the disposition of firearms (as scrap only), distilled spirits, wine, beer, and drug paraphernalia is provided in subpart E of this part.

(b) These regulations do not include disposal of seized, forfeited, voluntarily abandoned, and unclaimed personal property covered under authorities outside of the following statutes:

(1) 40 U.S.C. 552, Abandoned or Unclaimed Property on Government Premises.

(2) 40 U.S.C. 1306, Disposition of Abandoned or Forfeited Property.

(3) 26 U.S.C. 5688, Forfeited Distilled Spirits, Wines, and Beer.

(4) 26 U.S.C. 5872, Forfeited Firearms.

(5) 21 U.S.C. 863, Drug Paraphernalia.

§ 102–41.10 To whom do "we", "you", and their variants refer?

Use of pronouns ''we'', ''you'', and their variants throughout this part refer to the agency having custody of the personal property.

§ 102–41.15 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.

DEFINITIONS

§ 102–41.20 What definitions apply to this part?

The following definitions apply to this part:

Beer means an alcoholic beverage made from malted cereal grain, flavored with hops, and brewed by slow fermentation.

Distilled spirits, as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), means ethyl alcohol; hydrated oxide of ethyl; or spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

Drug paraphernalia means any equipment, product, or material primarily intended or designed for use in manufacturing, compounding, converting, concealing, processing, preparing, or introducing into the human body a controlled substance in violation of the Controlled Substances Act (see 21 U.S.C. 863). It includes items primarily for use in injecting, ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body.

Eleemosynary institution means any nonprofit health or medical institution that is organized and operated for charitable purposes.

Firearms means any weapon, silencer, or destructive device designed to, or readily convertible to, expel a projectile by the action of an explosive, as defined in the Internal Revenue Code (26 U.S.C. 5845). Excludes antique firearms as defined in 26 U.S.C. 5845(g).

Forfeited property means personal property that the Government has acquired ownership of through a summary process or court order pursuant to any law of the United States.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and handling will be the responsibility of the agency until final ownership is determined by the judicial process.

Unclaimed property means personal property unknowingly abandoned and found on premises owned or leased by the Government, i.e., lost and found property.

Voluntarily abandoned property means personal property abandoned to any Federal agency in a way that immediately vests title to the property in the Government. There must be written or circumstantial evidence that the property was intentionally and voluntarily abandoned. This evidence should be clear that the property was not simply lost by the owner.

Wine means the fermented juice of a plant product, as defined in 27 U.S.C. 211.

RESPONSIBILITY

§ 102–41.25 Who retains custody and is responsible for the reporting, care, and handling of property covered by this part?

You, the holding agency, normally retain physical custody of the property and are responsible for its care and handling pending final disposition. With the exception of property listed in § 102–41.35, you must report promptly to the GSA forfeited, voluntarily abandoned, or unclaimed personal property not being retained for official use and seized property on which proceedings for forfeiture by court decree are being started or have begun. In general, the procedures for reporting such property parallel those for reporting excess personal property under part 102–36 of this subchapter B.

§ 102–41.30 What is GSA's role in the disposition of property covered by this part?

(a) *Seized property subject to court proceedings for forfeiture.* (1) If the seizing agency files a request for the property for its official use, the GSA Region 3/National Capital Region will apply to the court for an order to turn the property over to the agency should forfeiture be decreed. If no such request has been filed, GSA will determine whether retention of the property for Federal official use is in the Government's best interest, and, if so, will apply to the court to order delivery of the property to—

(i) Any other Federal agency that requests it; or

(ii) The seizing agency to be retained for a reasonable time in case the property may later become necessary to any agency for official use.

(2) In the event that the property is not ordered by competent authority to be forfeited to the United States, it may be returned to the claimant.

(b) *Forfeited, voluntarily abandoned, or unclaimed property.* When forfeited, voluntarily abandoned, or unclaimed property is reported to GSA for disposal, GSA will direct its disposition by—

(1) Transfer to another Federal agency;

(2) Donation to an eligible recipient, if the property is not needed by a Federal agency and there are no requirements for reimbursement to satisfy the claims of owners, lien holders, or other lawful claimants;

(3) Sale; or

(4) Abandonment and destruction in accordance with § 102–36.305 of this subchapter B.

§ 102–41.35 Do we report to GSA all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not retained for official use?

Yes, send GSA reports of excess (see § 102–36.125 of this subchapter B) for all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not required for official use, except the following, whose disposition is covered under other statutes and authorities:

(a) Forfeited firearms or munitions of war seized by the Department of Commerce and transferred to the Department of Defense (DOD) pursuant to 22 U.S.C. 401.

(b) Forfeited firearms directly transferable to DOD by law.

(c) Seeds, plants, or misbranded packages seized by the Department of Agriculture.

(d) Game animals and equipment (other than vessels, including cargo) seized by the Department of the Interior.

(e) Files of papers and undeliverable mail in the custody of the United States Postal Service.

(f) Articles in the custody of the Department of Commerce Patent and Trademark Office that are in violation of laws governing trademarks or patents.

(g) Unclaimed and voluntarily abandoned personal property subject to laws and regulations of the U.S. Customs and Border Protection, Department of Homeland Security.

(h) Property seized in payment of or as security for debts arising under the internal revenue laws.

(i) Lost, abandoned, or unclaimed personal property the Coast Guard or the military services are authorized to dispose of under 10 U.S.C. 2575.

(j) Property of deceased veterans left on a Government facility subject to 38 U.S.C. 8501.

(k) Controlled substances reportable to the Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(l) Forfeited, condemned, or voluntarily abandoned tobacco, snuff, cigars, or cigarettes which, if offered for sale, will not bring a price equal to the internal revenue tax due and payable thereon; and which is subject to destruction or delivery without payment of any tax to any hospital maintained by the Federal Government for the use of present or former members of the military.

(m) Property determined appropriate for abandonment/destruction (see § 102–36.305 of this subchapter B).

(n) Personal property where handling and disposal is governed by specific legislative authority notwithstanding Title 40 of the United States Code.

Subpart B—Seized or Forfeited Personal Property

§ 102–41.40 How is personal property forfeited?

Personal property that has been seized by a Federal agency may be forfeited through court decree (judicial forfeiture) or administratively forfeited if the agency has specific authority without going through the courts.

§ 102–41.45 May we place seized personal property into official use before the forfeiture process is completed?

No, property under seizure and pending forfeiture cannot be placed into official use until a final determination is made to vest title in the Government.

§ 102–41.50 May we retain forfeited personal property for official use?

Yes, you may retain for official use personal property forfeited to your agency, except for property you are required by law to sell. Retention of large sedans and limousines for official use is only authorized under the provisions of part 102–34 of this subchapter B. Except for the items noted in § 102–41.35, report to GSA all forfeited personal property not being retained for official use.

§ 102–41.55 Where do we send the reports for seized or forfeited personal property?

(a) Except for the items noted in paragraph (b) of this section, report seized or forfeited personal property not retained for official use to the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407.

(b) Report aircraft, firearms, and vessels to the regional GSA Property Management Branch office specified in § 102–36.125 of this subchapter B.

§ 102–41.60 Are there special requirements in reporting seized or forfeited personal property to GSA?

Yes, in addition to the information required in § 102–36.235 of this subchapter B for reporting excess, you must indicate—

(a) Whether the property—

(1) Was forfeited in a judicial proceeding or administratively (without going through a court);

(2) Is subject to pending court proceedings for forfeiture, and, if so, the name of the defendant, the place and judicial district of the court from which the decree will be issued, and whether you wish to retain the property for official use;

(b) The report or case number under which the property is listed; and

(c) The existence or probability of a lien, or other accrued or accruing charges, and the amount involved.

§ 102–41.65 What happens to forfeited personal property that is transferred or retained for official use?

Except for drug paraphernalia (see §§ 102–41.210 through 102–41.235), forfeited personal property retained for official use or transferred to another Federal agency under this subpart loses its identity as forfeited property. When no longer required for official use, you must report it to GSA as excess for disposal in accordance with part 102–36 of this subchapter B. You must follow the additional provisions of subpart E of this part and part 101–42 of Chapter 101, Federal Property Management Regulations in this title when disposing of firearms, distilled spirits, wine, beer, and drug paraphernalia.

§ 102–41.70 Are transfers of forfeited personal property reimbursable?

Recipient agencies do not pay for the property. However, you may charge the recipient agency all costs you incurred in storing, packing, loading, preparing for shipment, and transporting the property. If there are commercial charges incident to forfeiture prior to the transfer, the recipient agency must pay these charges when billed by the commercial organization. Any payment due to lien holders or other lawful claimants under a judicial forfeiture must be made in accordance with provisions of the court decree.

§ 102–41.75 May we retain the proceeds from the sale of forfeited personal property?

No, you must deposit the sales proceeds in the U.S. Treasury as miscellaneous receipts, unless otherwise directed by court decree or specifically authorized by statute.

Subpart C—Voluntarily Abandoned Personal Property

§ 102–41.80 When is personal property voluntarily abandoned?

Personal property is voluntarily abandoned when the owner of the property intentionally and voluntarily gives up title to such property and title vests in the Government. The receiving agency ordinarily documents receipt of the property to evidence its voluntary relinquishment. Evidence of the voluntary abandonment may be circumstantial.

§ 102–41.85 What choices do I have for retaining or disposing of voluntarily abandoned personal property?

You may either retain or dispose of voluntarily abandoned personal property based on the following circumstances:

(a) If your agency has a need for the property, you may retain it for official use, except for large sedans and limousines which may only be retained for official use as authorized under part 102–34 of this subchapter B. See § 102–41.90 for how retained property must be handled.

(b) If your agency doesn't need the property, you should determine whether it may be abandoned or destroyed in accordance with the provisions at FMR 102–36.305 through 102–36.330. Furthermore, in addition to the circumstances when property may be abandoned or destroyed without public notice at FMR 102–36.330, voluntarily abandoned property may also be abandoned or destroyed without public notice when the estimated resale value of the property is less than $500.

(c) If the property is not retained for official use or abandoned or destroyed, you must report it to GSA as excess in accordance with § 102–41.95.

§ 102–41.90 What happens to voluntarily abandoned personal property retained for official use?

Voluntarily abandoned personal property retained for official use or transferred to another Federal agency under this subpart loses its identity as voluntarily abandoned property. When no longer required for official use, you must report it to GSA as excess, or abandon/destroy the property, in accordance with part 102–36 of this subchapter B.

§ 102–41.95 Where do we send the reports for voluntarily abandoned personal property?

Except for aircraft, firearms, and vessels, report voluntarily abandoned personal property to the regional GSA Property Management Branch office for the region in which the property is located. Report aircraft, firearms, and vessels to the regional GSA Property Management Branch office specified in § 102–36.125 of this subchapter B.

§ 102–41.100 What information do we provide when reporting voluntarily abandoned personal property to GSA?

When reporting voluntarily abandoned personal property to GSA, you must provide a description and location of the property, and annotate that the property was voluntarily abandoned.

§ 102–41.105 What happens to voluntarily abandoned personal property when reported to GSA?

Voluntarily abandoned personal property reported to GSA will be made available for transfer, donation, sale, or abandonment/destruction in accordance with parts 102–36, 102–37, 102–38, and §§ 102–36.305 through 102–36.330 of this subchapter B, respectively. You must follow the additional provisions of §§ 102–41.190 through 102–41.235 and part 101–42 of Chapter 101, Federal Property Management Regulations in this title when disposing of firearms and other property requiring special handling.

§ 102–41.110 Are transfers of voluntarily abandoned personal property reimbursable?

No, all transfers of voluntarily abandoned personal property will be without reimbursement. However, you may charge the recipient agency all costs you incurred in storing, packing, loading, preparing for shipment, and transporting the property.

§ 102–41.115 May we retain the proceeds received from the sale of voluntarily abandoned personal property?

No, you must deposit the sales proceeds in the U.S. Treasury as miscellaneous receipts unless your agency has specific statutory authority to do otherwise.

Subpart D—Unclaimed Personal Property

§ 102–41.120 How long must we hold unclaimed personal property before disposition?

You must generally hold unclaimed personal property for 30 calendar days from the date it was found. Unless the previous owner files a claim, title to the property vests in the Government after 30 days, and you may retain or dispose of the property in accordance with this part. However, see the following sections for handling of unclaimed personal property under specific circumstances.

§ 102–41.125 What choices do I have for retaining or disposing of unclaimed personal property?

You may either retain or dispose of unclaimed abandoned personal property based on the following circumstances:

(a) If your agency has a need for the property, you may retain it for official use if you have held the unclaimed property for 30 calendar days and the former owner has not filed a claim. After 30 days, title vests in the Government and you may retain the unclaimed property for official use. Large sedans and limousines which may only be retained for official use as authorized under part 102–34 of this subchapter B. See § 102–41.130 for how retained property must be handled.

(b) If your agency doesn't need the property, you should determine whether it may be immediately abandoned or destroyed in accordance with the provisions at FMR 102–36.305 through 102–36.330. You are not required to hold unclaimed property for 30 days, if you decide to abandon or destroy it. Title to the property immediately vests in the Government in these circumstances. In addition to the circumstances when property may be abandoned or destroyed without public notice at FMR 102–36.330, unclaimed personal property may also be abandoned or destroyed without public notice when the estimated resale value of the property is less than $500. See § 102–41.135 for procedures to be followed if a claim is filed.

(c) If the property is not retained for official use or abandoned or destroyed, you must report it to GSA as excess in accordance with § 102–41.140.

§ 102–41.130 What must we do when we retain unclaimed personal property for official use?

(a) You must maintain records of unclaimed personal property retained for official use for 3 years after title vests in the Government to permit identification of the property should the former owner file a claim for the property. You must also deposit funds received from disposal of such property in a special account to cover any valid claim filed within this 3-year period.

(b) When you no longer need the unclaimed property which you have

placed in official use, report it as excess in the same manner as other excess property under part 102–36 of this subchapter B.

§ 102–41.135 How much reimbursement do we pay the former owner when he or she files a claim for unclaimed personal property that we no longer have?

If the property was sold, reimbursement of the property to the former owner must not exceed any proceeds from the disposal of such property, less the costs of the Government's care and handling of the property. If the property was abandoned or destroyed in accordance with § 102–41.125, or otherwise used or transferred, reimbursement of the property to the former owner must not exceed the estimated resale value of the property at the time of the vesting of the property with the Government, less costs incident to the care and handling of the property, as determined by the General Services Administration, Office of Travel, Transportation, and Asset Management (MT), Washington DC, 20405.

§ 102–41.140 When do we report to GSA unclaimed personal property not retained for official use?

After you have held the property for 30 calendar days and no one has filed a claim for it, the title to the property vests in the Government. If you decide not to retain the property for official use, report it as excess to GSA in accordance with part 102–36 of this subchapter B.

§ 102–41.145 Where do we send the reports for unclaimed personal property?

Except for the items noted in § 102–36.125 of this subchapter B, report unclaimed personal property to the regional GSA Property Management Branch office for the region in which the property is located.

§ 102–41.150 What special information do we provide on reports of unclaimed personal property?

On reports of unclaimed personal property, you must provide the report or case number assigned by your agency, property description and location, and indicate the property as unclaimed and the estimated fair market value.

§ 102–41.155 Is unclaimed personal property available for transfer to another Federal agency?

Yes, unclaimed personal property is available for transfer to another Federal agency, but only after 30 calendar days from the date of finding such property and no claim has been filed by the former owner, and with fair market value reimbursement from the recipient agency. The transferred property then loses its identity as unclaimed property and becomes property of the Government, and when no longer needed it must be reported excess in accordance with part 102–36 of this subchapter B.

§ 102–41.160 May we retain the reimbursement from transfers of unclaimed personal property?

No, you must deposit the reimbursement from transfers of unclaimed personal property in a special account for a period of 3 years pending a claim from the former owner. After 3 years, you must deposit these funds into miscellaneous receipts of the U.S. Treasury unless your agency has statutory authority to do otherwise.

§ 102–41.165 May we require reimbursement for the costs incurred in the transfer of unclaimed personal property?

Yes, you may require reimbursement from the recipient agency of any direct costs you incur in the transfer of the unclaimed property (e.g., storage, packing, preparation for shipping, loading, and transportation).

§ 102–41.170 Is unclaimed personal property available for donation?

No, unclaimed personal property is not available for donation because reimbursement at fair market value is required.

§ 102–41.175 May we sell unclaimed personal property?

Yes, you may sell unclaimed personal property after title vests in the Government (as provided for in § 102–41.120) and when there is no Federal interest. You may sell unclaimed personal property subject to the same terms and

conditions as applicable to surplus personal property and in accordance with part 102–38 of this subchapter B.

§ 102–41.180 May we retain the proceeds from the sale of unclaimed personal property?

No, you must deposit proceeds from the sale of unclaimed personal property in a special account to be maintained for a period of 3 years pending a possible claim by the former owner. After the 3-year period, you must deposit the funds in the U.S. Treasury as miscellaneous receipts or in such other agency accounts when specifically authorized by statute.

Subpart E—Personal Property Requiring Special Handling

§ 102–41.185 Are there certain types of forfeited, voluntarily abandoned, or unclaimed property that must be handled differently than other property addressed in this part?

Yes, you must comply with the additional provisions in this subpart when disposing of the types of property listed here.

FIREARMS

§ 102–41.190 May we retain forfeited, voluntarily abandoned, or unclaimed firearms for official use?

Generally, no; you may retain forfeited, voluntarily abandoned, or unclaimed firearms only when you are statutorily authorized to use firearms for official purposes.

§ 102–41.195 How do we dispose of forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use?

Report forfeited, voluntarily abandoned, or unclaimed firearms not retained for official use to the General Services Administration, Property Management Branch (7FP–8), Denver, CO 80225–0506 for disposal in accordance with § 101–42.1102–10 of the Federal Property Management Regulations in this title.

§ 102–41.200 Are there special disposal provisions for firearms that are seized and forfeited for a violation of the National Firearms Act?

Yes, firearms seized and forfeited for a violation of the National Firearms Act (26 U.S.C. 5801—5872) are subject to the disposal provisions of 26 U.S.C. 5872(b). When there is no contrary judgment or action under such forfeiture, GSA will direct the disposition of the firearms. GSA may—

(a) Authorize retention for official use by the Treasury Department;

(b) Transfer to an executive agency for use by it; or

(c) Order the firearms destroyed.

FORFEITED DISTILLED SPIRITS, WINE, AND BEER

§ 102–41.205 Do we report all forfeited distilled spirits, wine, and beer to GSA for disposal?

(a) Yes, except do not report distilled spirits, wine, and beer not fit for human consumption or for medicinal, scientific, or mechanical purposes. When reporting, indicate quantities and kinds, proof rating, and condition for shipping. GSA (3FPD) may transfer such property to another Federal agency for official purposes, or donate it to eligible eleemosynary institutions for medicinal purposes only.

(b) Forfeited distilled spirits, wine, and beer that are not retained for official use by the seizing agency or transferred or donated to eligible recipients by GSA must be destroyed. You must document the destruction with a record of the time and location, property description, and quantities destroyed.

DRUG PARAPHERNALIA

§ 102–41.210 What are some examples of drug paraphernalia?

Some examples of drug paraphernalia are—

(a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips (objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);

(f) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs;

(m) Ice pipes or chillers;

(n) Wired cigarette papers; or

(o) Cocaine freebase kits.

§ 102–41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?

No, only report drug paraphernalia that has been seized and forfeited for a violation of 21 U.S.C. 863. Unless statutorily authorized to do otherwise, destroy all other forfeited, voluntarily abandoned, or unclaimed drug paraphernalia. You must ensure the destruction is performed in the presence of two witnesses (employees of your agency), and retain in your records a signed certification of destruction.

§ 102–41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State Agency for Surplus Property (SASP)?

Yes, but GSA will only transfer or donate forfeited drug paraphernalia for law enforcement or educational purposes and only for use by Federal, State, or local authorities. Federal or State Agencies for Surplus Property (SASP) requests for such items must be processed through the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407. The recipient must certify on the transfer document that the drug paraphernalia will be used for law enforcement or educational purposes only.

§ 102–41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?

Yes, you must ensure that such drug paraphernalia does not lose its identity as forfeited property. Reports of excess and transfer documents for such drug paraphernalia must include the annotation that the property was seized and forfeited under 21 U.S.C. 863.

§ 102–41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?

No, you must release donated drug paraphernalia directly to the donee as designated on the transfer document.

§ 102–41.235 May we sell forfeited drug paraphernalia?

No, you must destroy any forfeited drug paraphernalia not needed for transfer or donation and document the destruction as specified in § 102–41.215.

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 necessary?

102–42.45 What is my agency's responsibility for establishing procedures for obtaining an appraisal?

102–42.50 What types of appraisals may my agency consider?

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 Vice President or a member of their 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: 40 U.S.C. 121(c); 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 and disposition of gifts of more than minimal value 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 of this subchapter B.

[71 FR 28778, May 18, 2006]

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;

(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 $350 or less, except that 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.

[65 FR 45539, July 24, 2000, as amended at 68 FR 56496, Sept. 4, 2002; 70 FR 2318, Jan. 12, 2005; 71 FR 28778, May 18, 2006; 73 FR 7475, Feb. 8, 2008; 76 FR 30551, May 26, 2011]

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 102–37 of this subchapter B.

(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 102–38 of this subchapter B.

(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.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

§ 102–42.25 Who retains custody of gifts and decorations pending disposal?

(a) The employing agency retains custody of gifts and decorations that 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 an appraisal necessary?

An appraisal is necessary when—

(a) An employee indicates an interest in purchasing a gift or decoration. In this situation, the appraisal must be obtained before the gift or decoration is reported to GSA for screening (see 102–42.20); or

(b) GSA requires the employing agency to obtain an appraisal of a gift or decoration that the agency has retained for official use and no longer needs before accepting the agency's report of the item as excess personal property; or

(c) The policy of one's own agency requires it, pursuant to 5 U.S.C. 7342(g).

NOTE TO § 102–42.40 paragraphs (a) and (b): Refer to § 102–42.50 for how appraisals under these two situations are handled.

[74 FR 2396, Jan. 15, 2009]

§ 102–42.45 What is my agency's responsibility for establishing procedures for obtaining an appraisal?

The employing agency is responsible for establishing its own procedure for obtaining an appraisal that represents the value of the gift in the United States. This applies to all gifts, even when the recipient wishes to retain and/or purchase the gift. Appraisals are required for gifts that are personalized (e.g., Books signed by the author, Gifts personally labeled).

[74 FR 2396, Jan. 15, 2009]

§ 102–42.50 What types of appraisals may my agency consider?

Your agency may allow—

(a) Written commercial appraisals conducted by an appraisal firm or trade organization; and

(b) Retail value appraisals where the value of the gift may be ascertained by

reviewing current and reliable non-discounted retail catalogs, retail price lists, or retail Web site valuations.

[74 FR 2396, Jan. 15, 2009]

§ 102–42.55 What does the employing agency do with the appraisal?

When an appraisal is necessary under § 102–42.40, the employing agency must include the appraisal with the Standard Form (SF) 120, Report of Excess Personal Property, and send it to GSA in accordance with the requirements of § 102–42.95. By attaching the appraisal, the employing agency is certifying that the value cited is the retail value/appraised value of the item in the United States in U.S. dollars on the date set forth on the appraisal.

[74 FR 2396, Jan. 15, 2009]

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 Vice President or a member of their family?

The National Archives and Records Administration normally handles gifts and decorations received by the President and Vice President or a member of the President's or Vice President's family.

[71 FR 28778, May 18, 2006]

§ 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, Utilization and Donation Program Division

(QSCA), 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.
(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.

[65 FR 45539, July 24, 2000, as amended at 74 FR 2396, Jan. 15, 2009]

§ 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 102–37 of this subchapter B.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

§ 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 representatives 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 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 commercially appraised value of the gift. Sales must be conducted and documented in accordance with part 102–38 of this subchapter B.

[68 FR 56496, Sept. 4, 2003, as amended at 71 FR 28778, May 18, 2006]

§ 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 102–38 of this subchapter B.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

SUBCHAPTER C—REAL PROPERTY

PART 102–71—GENERAL

Sec.
102–71.5 What is 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 [Reserved]
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. 121(c).

SOURCE: 70 FR 67786, Nov. 8, 2005, unless otherwise noted.

§ 102–71.5 What is 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 GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. These policies cover the acquisition, management, utilization, and disposal of real property by Federal agencies that initiate and have decision-making 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.
(k) Utility services.
(l) Location of space.

§ 102–71.15 [Reserved]

§ 102–71.20 What definitions apply to GSA's real property policies?

The following definitions apply to GSA's real property policies:

Airport means any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Alteration means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs that are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

Carpool means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis.

Commercial activities, within the meaning of subpart D, part 102–74 of this chapter, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not commercial activities for purposes of this part.)

Cultural activities include, but are not limited to, films, dramatics, dances, musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

Decontamination means the complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

Designated Official is the highest ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials.

Disabled employee means an employee who has a severe, permanent impairment that for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit, including the Department of Veterans Affairs or the Public Health Service.

Disposal agency means the Executive agency designated by the Administrator of General Services to dispose of surplus real or personal property.

Educational activities mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

Emergency includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks that are addressed by the U.S. Department of Homeland Security.

Executive means a Government employee with management responsibilities who, in the judgment of the employing agency head or his/her designee, requires preferential assignment of parking privileges.

Executive agency means an Executive department specified in section 101 of title 5; a military department specified in section 102 of such title; an independent establishment as defined in section 104(1) of such title; and a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31.

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 agency buildings manager means the buildings manager employed by GSA or a Federal agency that has been delegated real property management and operation authority from GSA.

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.

Flame-resistant means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc., classification marking for flammability are deemed to be flame resistant for purposes of this part.

Foot-candle is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

GSA means the U.S. General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part have been delegated by the Administrator of General Services.

Highest and best use means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location,

and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

Indefinite quantity contract (commonly referred to as *term contract*) provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders with the contractor by activities designated either specifically or by class.

Industrial property means any real property and related personal property that has been used or that is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

Landholding agency means the Federal agency that has accountability for the property involved. For the purposes of this definition, accountability means that the Federal agency reports the real property on its financial statements and inventory records.

Landing area means any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

Life cycle cost is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

Limited combustible means rigid materials or assemblies that have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

Maintenance, for the purposes of part 102–75, entitled ''Real Property Disposal,'' of this chapter, means the upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment. For the purposes of part 102–74, entitled ''Facility Management,'' of this chapter, maintenance means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. *Ordinary maintenance* means routine recurring work that is incidental to everyday operations; *preventive maintenance* means work programmed at scheduled intervals.

Management means the safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

Nationally recognized standards encompasses any standard or modification thereof that—

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption; or

(2) Was formulated through consultation by appropriate Federal agencies in a manner that afforded an opportunity for diverse views to be considered.

No commercial value means real property, including related personal property, which has no reasonable prospect of producing any disposal revenues.

Nonprofit organization means an organization identified in 26 U.S.C. 501(c).

Normally furnished commercially means consistent with the level of services provided by a commercial building operator for space of comparable quality and housing tenants with comparable requirements. Service levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

Occupancy Emergency Organization means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

Occupant agency means an organization that is assigned space in a facility under GSA's custody and control.

Occupant Emergency Plan means procedures developed to protect life and property in a specific federally occupied space under stipulated emergency conditions.

Occupant Emergency Program means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

Postal vehicle means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract with the U.S. Postal Service for the transportation of mail.

Protection means the provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against thievery, vandalism, and unauthorized entry.

Public area means any area of a building under the control and custody of GSA that is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

Public body means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

Public building means:

(1) Any building that 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 Veterans Affairs installations used for hospital or domiciliary purposes.

(ix) Excluded by the President.

Real property means:

(1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except—

(i) The public domain;

(ii) Lands reserved or dedicated for national forest or national park purposes;

(iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved that the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(v) Crops when designated by such agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency, whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

Recognized labor organization means a labor organization recognized under title VII of the Civil Service Reform Act of 1978 (Pub. L. 95–454), as amended, governing labor-management relations.

Recreational activities include, but are not limited to, the operations of gymnasiums and related facilities.

Regional Officer, within the meaning of part 102–74, subpart D of this chapter, means the Federal official designated to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2). The Federal official may be an employee of GSA or a Federal agency that has delegated authority from GSA to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2).

Related personal property means any personal property—

(1) That is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and the removal of which would significantly diminish the economic value of the real property (normally common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property); or

(2) That is determined by the Administrator of General Services to be related to the real property.

Repairs means those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

Ridesharing means the sharing of the commute to and from work by two or more people, on a continuing basis, regardless of their relationship to each other, in any mode of transportation, including, but not limited to, carpools, vanpools, buspools, and mass transit.

State means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

Unit price agreement provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

Unusual hours means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes time worked by individuals who regularly or frequently work significantly more than 8 hours per day. Unusual hours does not include time worked by shift workers, by those on alternate work schedules, and by those granted exceptions to the normal work schedule (e.g., flex-time).

Upon approval from GSA means when an agency either has a delegation of authority document from the Administrator of General Services or written approval from the Administrator or his/her designee before proceeding with a specified action.

Vanpool means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip.

Zonal allocations means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

§ 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.

§ 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

Subpart A—General Provisions

Sec.

102–72.5 What is the scope of this part?
102–72.10 What basic policy governs delegation of authority to Federal agencies?

Subpart B—Delegation of Authority

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 Administrative Contracting Officer (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?
102–72.66 Do Executive agencies have a delegation of authority to perform ancillary repair and alteration projects in federally owned buildings under the jurisdiction, custody or control of GSA?
102–72.67 What work is covered under an ancillary repair and alteration delegation?
102–72.68 What preconditions must be satisfied before an Executive agency may exercise the delegated authority to perform an individual ancillary repair and alteration project?
102–72.69 What additional terms and conditions apply to an Executive agencies' delegation of ancillary repair and alteration authority?
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?
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. 121(c), (d) and (e).

SOURCE: 70 FR 67789, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–72.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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.

Subpart B—Delegation of Authority

§ 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 and agency special purpose space delegations (see § 102–73.140 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 up to 19,999 rentable square feet of general purpose space for terms of up to 20 years and below prospectus level requirements, 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 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 do not change the lease term length or the amount of space under lease.

[70 FR 67789, Nov. 8, 2005, as amended at 73 FR 2167, Jan. 14, 2008]

§ 102–72.35 What are the requirements for obtaining an Administrative Contracting Officer (ACO) delegation from GSA?

When Federal agencies do not exercise the delegation of authority for general purpose space mentioned in § 102–72.30(b) of this part, GSA may consider granting an ACO delegation when Federal agencies—

(a) Occupy at least 90 percent of the building's GSA-controlled space, or 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.

§ 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, as specified in the GSA Customer Guide to Real Property.

§ 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.

§ 102–72.66 Do Executive agencies have a delegation of authority to perform ancillary repair and alteration projects in federally owned buildings under the jurisdiction, custody or control of GSA?

Yes. Executive agencies, as defined in § 102–71.20, are hereby delegated the authority to perform ancillary repair and alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in §§ 102–72.67 through 102–72.69.

[74 FR 12273, Mar. 24, 2009]

§ 102–72.67 What work is covered under an ancillary repair and alteration delegation?

(a) For purposes of this delegation, ancillary repair and alteration projects are those—

(1) Where an Executive agency has placed an order from a vendor under a GSA Multiple Award Schedule and ancillary repair and alteration services

also are available from that same vendor as a Special Item Number (SIN);

(2) Where the ancillary repair and alteration work to be performed is associated solely with the repair, alteration, delivery, or installation of products or services also purchased under the same GSA Multiple Award Schedule;

(3) That are routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar non-complex services; and

(4) That are necessary to be performed to use, execute or implement successfully the products or services purchased from the GSA Multiple Award Schedule.

(b) Ancillary repair and alteration projects do not include—

(1) Major or new construction of buildings, roads, parking lots, and other facilities;

(2) Complex repair and alteration of entire facilities or significant portions of facilities; or

(3) Architectural and engineering services procured pursuant to 40 U.S.C. 1101–1104.

[74 FR 12273, Mar. 24, 2009]

§ 102–72.68 What preconditions must be satisfied before an Executive agency may exercise the delegated authority to perform an individual ancillary repair and alteration project?

The preconditions that must be satisfied before an Executive agency may perform ancillary repair and alteration work are as follows:

(a) The ordering agency must order both the products or services and the ancillary repair and alteration services under the same GSA Multiple Award Schedule from the same vendor;

(b) The value of the ancillary repair and alteration work must be less than or equal to $100,000 (for work estimated to exceed $100,000, the Executive agency must contact the GSA Assistant Regional Administrator, Public Buildings Service, in the region where the work is to be performed to request a specific delegation);

(c) All terms and conditions applicable to the acquisition of ancillary repair and alteration work as required by the GSA Multiple Award Schedule ordering procedures must be satisfied;

(d) The ancillary repair and alteration work must not be in a facility leased by GSA or in any other leased facility acquired under a lease delegation from GSA; and

(e) As soon as reasonably practicable, the Executive agency must provide the building manager with a detailed scope of work, including cost estimates, and schedule for the project, and such other information as may be reasonably requested by the building manager, so the building manager can determine whether or not the proposed work is reasonably expected to have an adverse effect on the operation and management of the building, the building's structural, mechanical, electrical, plumbing, or heating and air conditioning systems, the building's aesthetic or historic features, or the space or property of any other tenant in the building. The Executive agency must obtain written approval from the building manager prior to placing an order for any ancillary repair and alteration work.

[74 FR 12273, Mar. 24, 2009]

§ 102–72.69 What additional terms and conditions apply to an Executive agencies' delegation of ancillary repair and alteration authority?

(a) Before commencing any ancillary repair and alteration work, the Executive agency shall deliver, or cause its contractor to deliver, to the building manager evidence that the contractor has obtained at least $5,000,000 comprehensive general public liability and property damage insurance policies to cover claims arising from or relating to the contractor's operations that cause damage to persons or property; such insurance shall name the United States as an additional insured.

(b) The Executive agency shall agree that GSA has no responsibility or liability, either directly or indirectly, for any contractual claims or disputes that arise out of or relate to the performance of ancillary repair and alteration work, except to the extent such claim or dispute arises out of or relates to the wrongful acts or negligence of GSA's agents or employees.

(c) The Executive agency shall agree to administer and defend any claims and actions, and shall be responsible for the payment of any judgments rendered or settlements agreed to, in connection with contract claims or other causes of action arising out of or relating to the performance of the ancillary repair and alteration work.

(d) For buildings under GSA's custody and control, GSA shall have the right, but not the obligation, to review the work from time to time to ascertain that it is being performed in accordance with the approved project requirements, schedules, plans, drawings, specifications, and other related construction documents. The Executive agency shall promptly correct, or cause to be corrected, any non-conforming work or property damage identified by GSA, including damage to the space or property of any other tenant in the building, at no cost or expense to GSA.

(e) The Executive agency shall remain liable and financially responsible to GSA for any and all personal or property damage caused, in whole or in part, by the acts or omissions of the Executive agency, its employees, agents, and contractors.

(f) If the cost or expense to GSA to operate the facility is increased as a result of the ancillary repair and alteration project, the Executive agency shall be responsible for any such costs or expenses.

(g) Disputes between the Executive agency and GSA arising out of the ancillary repair and alteration work will, to the maximum extent practicable, be resolved informally at the working level. In the event a dispute cannot be resolved informally, the matter shall be referred to GSA's Public Buildings Service. The Executive agency agrees that, in the event GSA's Public Buildings Service and the Executive agency fail to resolve the dispute, they shall refer it for resolution to the Administrator of General Services, whose decision shall be binding.

[74 FR 12273, Mar. 24, 2009]

§ 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 102–75, subpart F of this chapter.

§ 102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

Law enforcement and related security functions were transferred to the Department of Homeland Security upon its establishment in 2002. The Homeland Security Act authorizes the Secretary of Homeland Security, in consultation with the Administrator of General Services, to issue regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. Notwithstanding the foregoing, GSA retained all powers, functions and authorities necessary for the operation, maintenance, and protection of buildings and grounds owned and occupied by the Federal Government and under the jurisdiction, custody, or control of GSA.

§ 102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?

An Executive agency may request a security delegation from GSA by submitting a written request with the detailed basis for the requested delegation to the Assistant Regional Administrator, PBS, in the region where the building is located. A request for multiple buildings in multiple regions should be directed to the Commissioner of PBS. The delegation may be granted where the requesting agency demonstrates a compelling need for the delegated authority and the delegation is not inconsistent with the authorities of any other law enforcement agency.

§ 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

Subpart A—General Provisions

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 may Federal agencies provide?

UNITED STATES POSTAL SERVICE-CONTROLLED SPACE

102–73.20 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?

LOCATING FEDERAL FACILITIES

102–73.25 What policies must Executive agencies comply with in locating Federal facilities?

HISTORIC PRESERVATION

102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

PROSPECTUS REQUIREMENTS

102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?
102–73.40 What happens if the dollar value of the project exceeds the prospectus threshold?

Subpart B—Acquisition by Lease

102–73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?
102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?
102–73.55 On what basis must Federal agencies acquire leases?
102–73.60 With whom may Federal agencies enter into lease agreements?
102–73.65 Are there any limitations on leasing certain types of space?

102–73.70 Are Executive agencies required to acquire leased space by negotiation?
102–73.75 What functions must Federal agencies perform with regard to leasing building space?
102–73.80 Who is authorized to contact lessors, offerors, or potential offerors concerning space leased or to be leased?
102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?
102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?
102–73.95 How are Federal agencies required to assist GSA?

COMPETITION IN CONTRACTING ACT OF 1984

102–73.100 Is the Competition in Contracting Act of 1984, as amended (CICA), applicable to lease acquisition?

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

102–73.105 What policies must Federal agencies follow to implement the requirements of NEPA when acquiring real property by lease?

LEASE CONSTRUCTION

102–73.110 What rules must Executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

PRICE PREFERENCE FOR HISTORIC PROPERTIES

102–73.115 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?
102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?
102–73.125 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

LEASES WITH PURCHASE OPTIONS

102–73.130 When may Federal agencies consider acquiring leases with purchase options?

SCORING RULES

102–73.135 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

DELEGATIONS OF LEASING AUTHORITY

102–73.140 When may agencies that do not possess independent leasing authority lease space?

CATEGORICAL SPACE DELEGATIONS

102–73.145 What is a categorical space delegation?
102–73.150 What is the policy for categorical space delegations?
102–73.155 What types of space can Federal agencies acquire with a categorical space delegation?

SPECIAL PURPOSE SPACE DELEGATIONS

102–73.160 What is an agency special purpose space delegation?
102–73.165 What is the policy for agency special purpose space delegations?
102–73.170 What types of special purpose space may the Department of Agriculture lease?
102–73.175 What types of special purpose space may the Department of Commerce lease?
102–73.180 What types of special purpose space may the Department of Defense lease?
102–73.185 What types of special purpose space may the Department of Energy lease?
102–73.190 What types of special purpose space may the Federal Communications Commission lease?
102–73.195 What types of special purpose space may the Department of Health and Human Services lease?
102–73.196 What types of special purpose space may the Department of Homeland Security lease?
102–73.200 What types of special purpose space may the Department of the Interior lease?
102–73.205 What types of special purpose space may the Department of Justice lease?
102–73.210 What types of special purpose space may the Office of Thrift Supervision lease?
102–73.215 What types of special purpose space may the Department of Transportation lease?
102–73.220 What types of special purpose space may the Department of the Treasury lease?
102–73.225 What types of special purpose space may the Department of Veterans Affairs lease?

LIMITATIONS ON THE USE OF DELEGATED AUTHORITY

102–73.230 When must Federal agencies submit a prospectus to lease real property?
102–73.235 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?
102–73.240 What policy must Federal agencies follow to acquire official parking spaces?

Subpart C—Acquisition by Purchase or Condemnation

BUILDINGS

102–73.245 When may Federal agencies consider purchase of buildings?
102–73.250 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?
102–73.255 What factors must Executive agencies consider when purchasing sites?

LAND

102–73.260 What land acquisition policy must Federal agencies follow?
102–73.265 What actions must Federal agencies take to facilitate land acquisition?

JUST COMPENSATION

102–73.270 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?
102–73.275 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?
102–73.280 Where can Federal agencies find guidance on how to appraise the value of properties being acquired by the Federal Government?
102–73.285 [Reserved]
102–73.290 Are there any prohibitions when a Federal agency pays ''just compensation'' to a tenant?

EXPENSES INCIDENTAL TO PROPERTY TRANSFER

102–73.295 What property transfer expenses must Federal agencies cover when acquiring real property?

LITIGATION EXPENSES

102–73.300 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

RELOCATION ASSISTANCE POLICY

102–73.305 What relocation assistance policy must Federal agencies follow?

AUTHORITY: 40 U.S.C. 121(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 301 note); Sec. 1–201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

SOURCE: 70 FR 67791, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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?

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal 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 may Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate acquisition and related services, including leasing (with or without purchase options), building and/or site purchase, condemnation, and relocation assistance. For information on the design and construction of Federal facilities, see part 102–76 of this chapter.

UNITED STATES POSTAL SERVICE-CONTROLLED SPACE

§ 102–73.20 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 and determining that no such space is available to meet its needs, 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, as specified in the ''Agreement Between General Services Administration and the United States Postal Service Covering Real and Personal Property Relationships and Associated Services,'' dated July 1985.

LOCATING FEDERAL FACILITIES

§ 102–73.25 What policies must Executive agencies comply with in locating Federal facilities?

Executive agencies must comply with the location policies in this part and part 102–83 of this chapter.

HISTORIC PRESERVATION

§ 102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

Prior to acquiring, constructing, or leasing space, 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. Federal agencies can find guidance on protecting, enhancing, and preserving historic and cultural property in part 102–78 of this chapter.

PROSPECTUS REQUIREMENTS

§ 102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?

No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. 40 U.S.C. 3307 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. The current prospectus threshold value for each fiscal year can be accessed by entering GSA's Web site at *http://www.gsa.gov* and then inserting ''prospectus thresholds'' in the search mechanism in the upper right-hand corner of the page.

§ 102–73.40 What happens if the dollar value of the project exceeds the prospectus threshold?

Projects require approval by the Senate and the House of Representatives if the dollar value of a project exceeds the prospectus threshold. To obtain this approval, the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives. Furthermore, as indicated in § 102–72.30(b), the general purpose lease delegation authority is restricted to below the prospectus threshold, and therefore, GSA must conduct all lease acquisitions over the threshold.

Subpart B—Acquisition by Lease

§ 102–73.45 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 met satisfactorily 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.

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

§ 102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?

No, Federal agencies possessing independent statutory authority to acquire leased space are not subject to GSA authority and, therefore, may not be subject to the requirements of this part. However, lease prospectus approval requirements of 40 U.S.C. Section 3307 may still apply appropriations to lease of space for public purposes under an agency's independent leasing authority.

§ 102–73.55 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.

§ 102–73.60 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, partnership, corporation, or other public or private entity, provided that such lease agreements do not bind the Government for periods in excess of twenty years (40 U.S.C. 585(a)). Federal agencies may not enter into lease agreements with persons who are barred from contracting with the Federal Government (e.g., Members of Congress or debarred or suspended contractors).

§ 102–73.65 Are there any limitations on leasing certain types of space?

Yes, the limitations on leasing certain types of 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. 3307(f)(1)).

(b) However, Federal agencies may lease such space if the Administrator of General Services first determines that leasing such space is necessary to meet requirements that cannot be met in public buildings, and then submits such determination to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives in accordance with 40 U.S.C. 3307(f)(2).

§ 102–73.70 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, as amended (CICA) (41 U.S.C. 253(a)).

§ 102–73.75 What functions must Federal agencies perform with regard to leasing building space?

Federal agencies, upon approval from GSA, must perform all functions of leasing building space, and land incidental thereto, for their use except as provided in this subpart.

§ 102–73.80 Who is authorized to contact lessor, offerors, or potential offerors concerning space leased or to be leased?

No one, except the Contracting Officer or his or her designee, may contact lessors, offerors, or potential offerors concerning space leased or to be leased for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

§ 102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?

Yes, upon request, GSA may perform, on a reimbursable basis, all functions of leasing building space, and land incidental thereto, for Federal agencies possessing independent statutory authority to lease space. However, GSA reserves the right to accept or reject reimbursable leasing service requests on a case-by-case basis.

§ 102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?

Federal agencies must apply the contingent fee policies in 48 CFR 3.4 to all negotiated and sealed bid contracts for the acquisition of real property by lease. Federal agencies must appropriately adapt the representations and covenants required by that subpart for use in leases of real property for Government use.

§ 102–73.95 How are Federal agencies required to assist GSA?

The heads of Federal agencies must—

(a) Cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space;

(b) Take measures to give GSA early notice of new or changing space requirements;

(c) Seek to economize their requirements for space; and

(d) Continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities that can be carried on elsewhere without excessive costs or significant loss of efficiency.

COMPETITION IN CONTRACTING ACT OF 1984

§ 102–73.100 Is the Competition in Contracting Act of 1984, as amended (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, 41 U.S.C. 253.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

§ 102–73.105 What policies must Federal agencies follow to implement the requirements of NEPA when acquiring real property by lease?

Federal agencies must follow the NEPA policies identified in §§ 102–76.40 and 102–76.45 of this chapter.

LEASE CONSTRUCTION

§ 102–73.110 What rules must Executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

When acquiring leasehold interests in buildings to be constructed for Federal Government use, Executive agencies must—

(a) Establish detailed building specifications before agreeing to a contract that will result in the construction of a building;

(b) Use competitive procedures;

(c) Inspect every building during construction to ensure that the building complies with the Government's specifications;

(d) Evaluate every building after completion of construction to determine that the building complies with the Government's specifications; and

(e) Ensure that any contract that will result in the construction of a building contains provisions permitting the Government to reduce the rent during any period when the building does not comply with the Government's specifications.

PRICE PREFERENCE FOR HISTORIC PROPERTIES

§ 102–73.115 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?

Yes, Federal agencies must give a price preference to space in historic properties when acquiring leased space using either the lowest price technically acceptable or the best value tradeoff source selection processes.

§ 102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?

Federal agencies must give a price evaluation preference to space in historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

§ 102–73.125 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference to historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

LEASES WITH PURCHASE OPTIONS

§ 102–73.130 When may Federal agencies consider acquiring leases with purchase options?

Agencies may consider leasing with a purchase option at or below fair market value, consistent with the lease-purchase scoring rules, 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.

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

SCORING RULES

§ 102–73.135 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.)

DELEGATIONS OF LEASING AUTHORITY

§ 102–73.140 When may agencies that do not possess independent leasing authority lease space?

Federal agencies may perform for themselves all functions necessary to acquire leased space in buildings and land incidental thereto when—

(a) The authority may be delegated (see § 102–72.30) on the different types of delegations related to real estate leasing);

(b) The space may be leased for no rental, or for a nominal consideration of $1 per annum, and is limited to terms not to exceed 1 year;

(c) Authority has been requested by an Executive agency and a specific delegation has been granted by the Administrator of General Services;

(d) A categorical delegation has been granted by the Administrator of General Services for space to accommodate particular types of agency activities, such as military recruiting offices or space for certain county level agricultural activities (see § 102–73.155 for a listing of categorical delegations); or

(e) The required space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to occupy such space and is not generally suitable for use by other agencies. Federal agencies must obtain prior approval from the GSA regional office having jurisdiction for the proposed leasing action, before initiating a leasing action involving 2,500 or more square feet of such special purpose space. GSA's approval must be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements. Agency special purpose

space delegations can be found in §§ 102–73.170 through 102–73.225.

CATEGORICAL SPACE DELEGATIONS

§ 102–73.145 What is a categorical space delegation?

A categorical space delegation is a standing delegation of authority from the Administrator of General Services to a Federal agency to acquire a type of space identified in § 102–73.155, subject to limitations in this part.

§ 102–73.150 What is the policy for categorical space delegations?

Subject to the limitations cited in §§ 102–73.230 through 102–73.240, all Federal agencies are authorized to acquire the types of space listed in § 102–73.155 and, except where otherwise noted, may lease space for terms, including all options, of up to 20 years.

§ 102–73.155 What types of space can Federal agencies acquire with a categorical space delegation?

Federal agencies can use categorical space delegations to acquire—

(a) Space to house antennas, repeaters, or transmission equipment;

(b) Depots, including, but not limited to, stockpiling depots and torpedo net depots;

(c) Docks, piers, and mooring facilities (including closed storage space required in combination with such facilities);

(d) Fumigation areas;

(e) Garage space (may be leased only on a fiscal year basis);

(f) Greenhouses;

(g) Hangars and other airport operating facilities including, but not limited to, flight preparation space, aircraft storage areas, and repair shops;

(h) Hospitals, including medical clinics;

(i) Housing (temporary), including hotels (does not include quarters obtained pursuant to temporary duty travel or employee relocation);

(j) Laundries;

(k) Quarantine facilities for plants, birds, and other animals;

(l) Ranger stations, i.e., facilities that typically include small offices staffed by one or more uniformed employees, and may include sleeping/family quarters, parking areas, garages, and storage space. Office space within ranger stations is minimal and does not comprise a majority of the space. (May also be referred to as guard stations, information centers, or kiosks);

(m) Recruiting space for the armed forces (lease terms, including all options, limited to 5 years);

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Specialized storage/depot facilities, such as cold storage; self-storage units; and lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage (general purpose warehouse type storage facilities not included); and

(p) Space for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations).

SPECIAL PURPOSE SPACE DELEGATIONS

§ 102–73.160 What is an agency special purpose space delegation?

An agency special purpose space delegation is a standing delegation of authority from the Administrator of General Services to specific Federal agencies to lease their own special purpose space (identified in §§ 102–73.170 through 102–73.225), subject to limitations in this part.

§ 102–73.165 What is the policy for agency special purpose space delegations?

Subject to the limitations on annual rental amounts, lease terms, and leases on parking spaces cited in §§ 102–73.230 through 102–73.240, the agencies listed below are authorized to acquire special purpose space associated with that agency and, except where otherwise noted, may lease such space for terms, including all options, of up to 20 years. The agencies and types of space subject to special purpose space delegations are specified in §§ 102–73.170 through 102–73.225.

§ 102–73.170 What types of special purpose space may the Department of Agriculture lease?

The Department of Agriculture is delegated the authority to lease the following types of special purpose space:

(a) Cotton classing laboratories (lease terms, including all options, limited to 5 years).

(b) Land (if unimproved, may be leased only on a fiscal year basis).

(c) Miscellaneous storage by cubic foot or weight basis.

(d) Office space when required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports (lease terms, including all options, limited to 5 years).

(e) Space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts.

(f) Space utilized in cooperation with State and local governments or their instrumentalities (extension services) where the cooperating State or local government occupies a portion of the space and pays a portion of the rent.

§ 102–73.175 What types of special purpose space may the Department of Commerce lease?

The Department of Commerce is delegated authority to lease the following types of special purpose space:

(a) Space required by the Census Bureau in connection with conducting the decennial census (lease terms, including all options, limited to 5 years).

(b) Laboratories for testing materials, classified or ordnance devices, calibration of instruments, and atmospheric and oceanic research (lease terms, including all options, limited to 5 years).

(c) Maritime training stations.

(d) Radio stations.

(e) Land (if unimproved, may be leased only on a fiscal year basis).

(f) National Weather Service meteorological facilities.

§ 102–73.180 What types of special purpose space may the Department of Defense lease?

The Department of Defense is delegated authority to lease the following types of special purpose space:

(a) Air Force—Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to airports, including aircraft and warning stations (if unimproved, land may be leased only on a fiscal year basis; for space, lease terms, including all options, limited to 5 years).

(b) Armories.

(c) Film library in the vicinity of Washington, DC.

(d) Mess halls.

(e) Ports of embarkation and debarkation.

(f) Post exchanges.

(g) Postal Concentration Center, Long Island City, NY.

(h) Recreation centers.

(i) Reserve training space.

(j) Service clubs.

(k) Testing laboratories (lease terms, including all options, limited to 5 years).

§ 102–73.185 What types of special purpose space may the Department of Energy lease?

The Department of Energy, as the successor to the Atomic Energy Commission, is delegated authority to lease facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

§ 102–73.190 What types of special purpose space may the Federal Communications Commission lease?

The Federal Communications Commission is delegated authority to lease monitoring station sites.

§ 102–73.195 What types of special purpose space may the Department of Health and Human Services lease?

The Department of Health and Human Services is delegated authority to lease laboratories (lease terms, including all options, limited to 5 years).

§ 102–73.196 What types of special purpose space may the Department of Homeland Security lease?

The Department of Homeland Security is delegated authority to lease whatever space its organizational units or components had authority to lease prior to the creation of the Department of Homeland Security, including—

(a) Border patrol offices similar in character and utilization to police stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location (lease terms, including all options limited to 5 years);

(b) Space for the U.S. Coast Guard oceanic unit, Woods Hole, MA; and

(c) Space for the U.S. Coast Guard port security activities.

§ 102–73.200 What types of special purpose space may the Department of the Interior lease?

The Department of the Interior is delegated authority to lease the following types of special purpose space:

(a) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, Bureau of Land Management, and the Geological Survey in areas where no other Government agencies are quartered (unimproved land may be leased only on a fiscal year basis).

(b) National Parks/Monuments Visitors Centers consisting primarily of special purpose space (e.g., visitor reception, information, and rest room facilities) and not general office or administrative space.

§ 102–73.205 What types of special purpose space may the Department of Justice lease?

The Department of the Justice is delegated authority to lease the following types of special purpose space:

(a) U.S. marshals office in any Alaska location (lease terms, including all options, limited to 5 years).

(b) Space used for storage and maintenance of surveillance vehicles and seized property (lease terms, including all options, limited to 5 years).

(c) Space used for review and custody of records and other evidentiary materials (lease terms, including all options, limited to 5 years).

(d) Space used for trial preparation where space is not available in Federal buildings, Federal courthouses, USPS facilities, or GSA-leased buildings (lease terms limited to not more than 1 year).

§ 102–73.210 What types of special purpose space may the Office of Thrift Supervision lease?

The Office of Thrift Supervision is delegated authority to lease space for field offices of Examining Divisions required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings (lease terms, including all options, limited to 5 years).

§ 102–73.215 What types of special purpose space may the Department of Transportation lease?

The Department of Transportation is delegated authority to lease the following types of special purpose space (or real property):

(a) Land for the Federal Aviation Administration (FAA) at airports (unimproved land may be leased only on a fiscal year basis).

(b) General purpose office space not exceeding 10,000 square feet for the FAA at airports in buildings under the jurisdiction of public or private airport authorities (lease terms, including all options, limited to 5 years).

§ 102–73.220 What types of special purpose space may the Department of the Treasury lease?

The Department of the Treasury is delegated authority to lease the following types of special purpose space:

(a) Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof (if unimproved, land may be leased only on a fiscal year basis; lease term for space, including all options, limited to 5 years).

(b) Aerostat radar facilities necessary for U.S. Custom Service mission activities.

§ 102–73.225 What types of special purpose space may the Department of Veterans Affairs lease?

The Department of Veterans Affairs is delegated authority to lease the following types of special purpose space:

(a) Guidance and training centers located at schools and colleges.

(b) Space used for veterans hospitals, including outpatient and medical-related clinics, such as drug, mental health, and alcohol.

LIMITATIONS ON THE USE OF DELEGATED AUTHORITY

§ 102–73.230 When must Federal agencies submit a prospectus to lease real property?

In accordance with 40 U.S.C. 3307, Federal agencies must submit a prospectus to the Administrator of General Services for leases involving a net annual rental, excluding services and

utilities, in excess of the prospectus threshold provided in 40 U.S.C. 3307. Agencies must be aware that prospectus thresholds are indexed and change each year.

§ 102–73.235 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?

Pursuant to GSA's authority to enter into lease agreements contained in 40 U.S.C. 585(a)(2), agencies delegated the authorities outlined herein may enter into leases for the term specified in the delegation. In those cases where agency special purposes space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis.

§ 102–73.240 What policy must Federal agencies follow to acquire official parking spaces?

Federal agencies that need parking must utilize available Government-owned or leased facilities. Federal agencies must make inquiries regarding availability of such Government-controlled space to GSA regional offices and document such inquiries. If no suitable Government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract.

Subpart C—Acquisition by Purchase or Condemnation

BUILDINGS

§ 102–73.245 When may Federal agencies consider purchase of buildings?

A Federal agency may consider purchase of buildings on a case-by-case basis if it has landholding authority and 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.

(d) When otherwise in the best interests of the Government.

§ 102–73.250 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?

Yes, when purchasing buildings, agencies must comply with the location policies in this part and part 102–83 of this chapter.

§ 102–73.255 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 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 Order 12072 (August 16, 1978, 43 FR 36869) and Executive Order 13006 (40 U.S.C. 3306 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 102–75, subpart B, of this chapter.

(b) A site adjacent to or in the proximity of an existing Federal building that 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 ''Brownfields'' program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable location policies in this part and part 102–83 of this chapter.

LAND

§ 102–73.260 What land acquisition policy must Federal agencies follow?

Federal agencies must follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, which—

(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.

§ 102–73.265 What actions must Federal agencies take to facilitate land acquisition?

To facilitate land acquisition, Federal agencies must, among other things—

(a) Appraise the real property before starting negotiations and give the owner (or the owner's representative) the opportunity to accompany the appraiser during the inspection;

(b) Establish an amount estimated to be the just compensation before starting negotiations and promptly offer to acquire the property for this full amount;

(c) Try to negotiate with owners on the price;

(d) Pay the agreed purchase price to the property owner, or in the case of a condemnation, deposit payment in the registry of the court, for the benefit of the owner, before requiring the owner to surrender the property; and

(e) Provide property owners (and occupants) at least 90 days' notice of displacement before requiring anyone to move. If a Federal agency permits the owner to keep possession for a short time after acquiring the owner's property, Federal agencies must not charge rent in excess of the property's fair rental value to a short-term occupier.

JUST COMPENSATION

§ 102–73.270 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?

Yes, Federal agencies must provide the owner with a written statement of this amount and summarize the basis for it. When it is appropriate, Federal agencies must separately state the just compensation for the property to be acquired and damages to the remaining real property.

§ 102–73.275 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?

The summary statement must—

(a) Identify the real property and the estate or interest the Federal agency is acquiring;

(b) Identify the buildings, structures, and other improvements the Federal agency considers part of the real property for which just compensation is being offered;

(c) State that the Federal agency based the estimate of just compensation on the Government's estimate of the property's fair market value. If only part of a property or less than a full interest is being acquired, Federal agencies must explain how they determined the just compensation for it; and

(d) State that the Government's estimate of just compensation is at least as much as the property's approved appraisal value.

§ 102–73.280 Where can Federal agencies find guidance on how to appraise the value of properties being acquired by the Federal Government?

The Interagency Land Acquisition Conference has developed, promulgated, and adopted the Uniform Appraisal Standards for Federal Land Acquisitions, sometimes referred to as the ''Yellow Book.'' The Interagency Land Acquisition Conference, established on November 27, 1968, by invitation of the Attorney General, is a voluntary organization composed of the many Federal agencies engaged in the acquisition of real estate for public uses. The ''Yellow Book'' is published

by the Appraisal Institute in cooperation with the U.S. Department of Justice and is available in hard copy or on the Department of Justice's internet Web site at *http://www.usdoj.gov/enrd/land-ack/*.

§ 102–73.285 [Reserved]

§ 102–73.290 Are there any prohibitions when a Federal agency pays "just compensation" to a tenant?

Yes, Federal agencies must not—

(a) Duplicate any payment to the tenant otherwise authorized by law; and

(b) Pay a tenant unless the landowner disclaims all interests in the tenant's improvements. In consideration for any such payment, the tenant must assign, transfer, and release to the Federal agency all of its right, title, and interest in the improvements. The tenant may reject such payment under this subpart and obtain payment for its property interests according to other sections of applicable law.

EXPENSES INCIDENTAL TO PROPERTY TRANSFER

§ 102–73.295 What property transfer expenses must Federal agencies cover when acquiring real property?

Federal agencies must—

(a) Reimburse property owners for all reasonable expenses actually incurred for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses needed to convey the property to the Federal Government;

(b) Reimburse property owners for all reasonable expenses actually incurred for penalty costs and other charges to prepay any existing, recorded mortgage that a property owner entered into in good faith and that encumbers the real property;

(c) Reimburse property owners for all reasonable expenses actually incurred for the prorated part of any prepaid real property taxes that cover the period after the Federal Government gets title to the property or effective possession of it, whichever is earlier; and

(d) Whenever possible, directly pay the costs identified in this section, so property owners will not have to pay them and then seek reimbursement from the Government.

LITIGATION EXPENSES

§ 102–73.300 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

Federal agencies must pay reasonable expenses for attorneys, appraisals, and engineering fees that a property owner incurs because of a condemnation proceeding, if any of the following are true:

(a) The court's final judgment is that the Federal agency cannot acquire the real property by condemnation.

(b) The Federal agency abandons the condemnation proceeding other than under an agreed-on settlement.

(c) The court renders a judgment in the property owner's favor in an inverse condemnation proceeding or the Federal agency agrees to settle such proceeding.

RELOCATION ASSISTANCE POLICY

§ 102–73.305 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, to eligible owners and tenants of property purchased for use by Federal agencies in accordance with the implementing regulations found in 49 CFR part 24. Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual—

(a) Reasonable moving expenses (in moving himself, his family, and business);

(b) Direct losses of tangible personal property as a result of moving or discontinuing a business;

(c) Reasonable expenses in searching for a replacement business or farm; and

(d) Reasonable expenses necessary to reestablish a displaced farm, nonprofit

organization, or small business at its new site, but not to exceed $10,000.

PART 102–74—FACILITY MANAGEMENT

Subpart A—General Provisions

Sec.
102–74.5 What is the scope of this part?
102–74.10 What is the basic facility management policy?

Subpart B—Facility Management

102–74.15 What are the facility management responsibilities of occupant agencies?

OCCUPANCY SERVICES

102–74.20 What are occupancy services?
102–74.25 What responsibilities do Executive agencies have regarding occupancy services?
102–74.30 What standard in providing occupancy services must Executive agencies follow?
102–74.35 What building services must Executive agencies provide?

CONCESSION SERVICES

102–74.40 What are concession services?
102–74.45 When must Federal agencies provide concession services?
102–74.50 Are Federal agencies required to give blind vendors priority in operating vending facilities?
102–74.55 Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?
102–74.60 Are Federal agencies required to give blind vendors priority in operating cafeterias?
102–74.65 Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?
102–74.70 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?
102–74.75 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?
102–74.80–102–74.95 [Reserved]

CONSERVATION PROGRAM

102–74.100 What are conservation programs?

ASSET SERVICES

102–74.105 What are asset services?
102–74.110 What asset services must Executive agencies provide?
102–74.115 What standard in providing asset services must Executive agencies follow?
102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?
102–74.125 Are prospectuses required for reimbursable alteration projects?
102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?
102–74.135 Who selects construction and alteration projects that are to be performed?
102–74.140 On what basis does the Administrator select construction and alteration projects?
102–74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?
102–74.150 Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?

ENERGY CONSERVATION

102–74.155 What energy conservation policy must Federal agencies follow in the management of facilities?
102–74.160 What actions must Federal agencies take to promote energy conservation?
102–74.165 What energy standards must Federal agencies follow for existing facilities?
102–74.170 May exceptions to the energy conservation policies in this subpart be granted?
102–74.175 Are Government-leased buildings required to conform with the policies in this subpart?
102–74.180 What illumination levels must Federal agencies maintain on Federal facilities?
102–74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?
102–74.190 Are portable heaters, fans, and other such devices allowed in Government-controlled facilities?
102–74.195 What ventilation policy must Federal agencies follow?
102–74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?

RIDESHARING

102–74.205 What Federal facility ridesharing policy must Executive agencies follow?
102–74.210 What steps must Executive agencies take to promote ridesharing at Federal facilities?
102–74.215–102–74.225 [Reserved]

OCCUPANT EMERGENCY PROGRAM

102–74.230 Who is responsible for establishing an occupant emergency program?

102–74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?
102–74.240 What are Federal agencies' occupant emergency responsibilities?
102–74.245 Who makes the decision to activate the Occupant Emergency Organization?
102–74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?
102–74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion, or the discovery of an explosive device (not including a bomb threat)?
102–74.260 What action must the Designated Official initiate when there is advance notice of an emergency?

PARKING FACILITIES

102–74.265 Who must provide for the regulation and policing of parking facilities?
102–74.270 Are vehicles required to display parking permits in parking facilities?
102–74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate, and police parking facilities?
102–74.280 Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?
102–74.285 How must Federal agencies assign priority to parking spaces in controlled areas?
102–74.290 May Federal agencies allow employees to use parking spaces not required for official needs?
102–74.295 Who determines the number of employee parking spaces for each facility?
102–74.300 How must space available for employee parking be allocated among occupant agencies?
102–74.305 How must Federal agencies assign available parking spaces to their employees?
102–74.310 What measures must Federal agencies take to improve the utilization of parking facilities?

SMOKING

102–74.315 What is the smoking policy for interior space in Federal facilities?
102–74.320 Are there any exceptions to the smoking policy for interior space in Federal facilities?
102–74.325 Are designated smoking areas authorized in interior space?
102–74.330 What smoking restrictions apply to outside areas under Executive branch control?
102–74.335 Who is responsible for furnishing and installing signs concerning smoking restrictions in the building, and in and around building entrance doorways and air intake ducts?
102–74.340 Who is responsible for monitoring and controlling areas designated for smoking by an agency head and for identifying those areas with proper signage?
102–74.345 Does the smoking policy in this part apply to the judicial branch?
102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?
102–74.351 If a state or local government has a smoke-free ordinance that is more strict than the smoking policy for Federal facilities, does the state or local law or Federal policy control?

ACCIDENT AND FIRE PREVENTION

102–74.355 With what accident and fire prevention standards must Federal facilities comply?
102–74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?

Subpart C—Conduct on Federal Property

APPLICABILITY

102–74.365 To whom does this subpart apply?

INSPECTION

102–74.370 What items are subject to inspection by Federal agencies?

ADMISSION TO PROPERTY

102–74.375 What is the policy on admitting persons to Government property?

PRESERVATION OF PROPERTY

102–74.380 What is the policy concerning the preservation of property?

CONFORMITY WITH SIGNS AND DIRECTIONS

102–74.385 What is the policy concerning conformity with official signs and directions?

DISTURBANCES

102–74.390 What is the policy concerning disturbances?

GAMBLING

102–74.395 What is the policy concerning gambling?

NARCOTICS AND OTHER DRUGS

102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

ALCOHOLIC BEVERAGES

102–74.405 What is the policy concerning the use of alcoholic beverages?

SOLICITING, VENDING AND DEBT COLLECTION

102–74.410 What is the policy concerning soliciting, vending and debt collection?

POSTING AND DISTRIBUTING MATERIALS

102–74.415 What is the policy for posting and distributing materials?

PHOTOGRAPHS FOR NEWS, ADVERTISING OR COMMERCIAL PURPOSES

102–74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

DOGS AND OTHER ANIMALS

102–74.425 What is the policy concerning dogs and other animals on Federal property?

BREASTFEEDING

102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

VEHICULAR AND PEDESTRIAN TRAFFIC

102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

EXPLOSIVES

102–74.435 What is the policy concerning explosives on Federal property?

WEAPONS

102–74.440 What is the policy concerning weapons on Federal property?

NONDISCRIMINATION

102–74.445 What is the policy concerning discrimination on Federal property?

PENALTIES

102–74.450 What are the penalties for violating any rule or regulation in this subpart?

IMPACT ON OTHER LAWS OR REGULATIONS

102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

Subpart D—Occasional Use of Public Buildings

102–74.460 What is the scope of this subpart?

APPLICATION FOR PERMIT

102–74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

102–74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

102–74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

PERMITS

102–74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?

102–74.485 Is there any limitation on the length of time of a permit?

102–74.490 What if more than one permit is requested for the same area and time?

102–74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?

DISAPPROVAL OF APPLICATIONS OR CANCELLATION OF PERMITS

102–74.500 Can Federal agencies disapprove permit applications or cancel issued permits?

102–74.505 What action must Federal agencies take after disapproving an application or canceling an issued permit?

APPEALS

102–74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?

102–74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?

102–74.520 How much time does the Regional Officer have to affirm or reverse the Federal agency buildings manager's decision after receiving the notification of appeal from the affected person or organization?

SCHEDULE OF USE

102–74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair, and construction?

HOURS OF USE

102–74.530 When may public areas be used?

SERVICES AND COSTS

102–74.535 What items may Federal agencies provide to permittees free of charge?

102–74.540 What are the items for which permittees must reimburse Federal agencies?

102–74.545 May permittees make alterations to the public areas?

102–74.550 What items are permittees responsible for furnishing?

CONDUCT

102–74.555 What rules of conduct must all permittees observe while on Federal property?

NON-AFFILIATION WITH THE GOVERNMENT

102–74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?

Subpart E—Installing, Repairing, and Replacing Sidewalks

102–74.565 What is the scope of this subpart?
102–74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?
102–74.575 How do Federal agencies arrange for work on sidewalks?
102–74.580 Who decides when to replace a sidewalk?

Subpart F—Telework

102–74.585 What Federal facility telework policy must Executive agencies follow?
102–74.590 What steps must agencies take to implement these laws and policies?
102–74.595 How can agencies obtain guidance, assistance, and oversight regarding alternative workplace arrangements from GSA?
102–74.600 Should Federal agencies utilize telework centers?

APPENDIX TO PART 102–74—RULES AND REGULATIONS GOVERNING CONDUCT ON FEDERAL PROPERTY

AUTHORITY: 40 U.S.C. 121(c); Executive Order 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

SOURCE: 70 FR 67798, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 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's 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 accomplishes 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.

Subpart B—Facility Management

§ 102–74.15 What are the facility management responsibilities of occupant agencies?

Occupants of facilities under the custody and control of Federal agencies must—

(a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;

(b) Promptly report all crimes and suspicious circumstances occurring on Federally controlled property first to the regional Federal Protective Service, and as appropriate, the local responding law enforcement authority;

(c) Provide training to employees regarding protection and responses to emergency situations; and

(d) Make recommendations for improving the effectiveness of protection in Federal facilities.

OCCUPANCY SERVICES

§ 102–74.20 What are occupancy services?

Occupancy services are—

(a) Building services (see § 102–74.35);

(b) Concession services (see § 102–74.40); and

(c) Conservation programs (see § 102–74.100).

§ 102–74.25 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) and contracts that provide for the delivery of occupancy services.

§ 102–74.30 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 controlled facilities to conform to statutory requirements and to implement cost-reduction efforts.

§ 102–74.35 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. 902 on P.O.W./M.I.A. flag display days.

CONCESSION SERVICES

§ 102–74.40 What are concession services?

Concession services are any food or snack services provided by a Randolph-Sheppard Act vendor, commercial contractor or nonprofit organization (see definition in § 102–71.20 of this chapter), in vending facilities such as—

(a) Vending machines;
(b) Sundry facilities;
(c) Prepackaged facilities;
(d) Snack bars; and
(e) Cafeterias.

§ 102–74.45 When must Federal agencies provide concession services?

Federal agencies, upon approval from GSA, must provide concession services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. Prior to establishing concessions, Federal agencies must ensure that—

(a) The proposed concession will be established and operated in conformance with applicable policies, safety, health and sanitation codes, laws, regulations, etc., and will not contravene the terms of any lease or other contractual arrangement; and

(b) Sufficient funds are legally available to cover all costs for which the Government may be responsible.

§ 102–74.50 Are Federal agencies required to give blind vendors priority in operating vending facilities?

With certain exceptions, the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) requires that blind persons licensed by a State licensing agency under the provisions of the Randolph-Sheppard Act be authorized to operate vending facilities on Federal property, including leased buildings. The Department of Education (ED) is responsible for the administration of the Randolph-Sheppard Act as set forth at 34 CFR part 395. The ED designates individual State licensing agencies with program administration responsibility. The Randolph-Sheppard Act and its implementing regulations require that Federal property managers give priority to and notify the State licensing agencies in writing of any opportunity.

§ 102–74.55 Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?

Vending facilities are authorized by permit. As set forth in 34 CFR part 395, the Federal property manager approves and signs State licensing agency permits that authorize States to license blind vendors to operate vending facilities (including vending machines) on Federal property.

§ 102–74.60 Are Federal agencies required to give blind vendors priority in operating cafeterias?

Yes. Federal agencies are required to give Randolph-Sheppard vendors priority in the operation of cafeterias when the State licensing agency is in

the competitive range as set forth at 34 CFR part 395.

§ 102–74.65 Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?

They are operated by contract. As set forth at 34 CFR part 395, the Federal property manager contracts with the State licensing agency to license blind vendors to operate cafeterias on Federal property.

§ 102–74.70 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?

Commercial vendors and nonprofit organizations must operate vending facilities, including cafeterias, under a contractual arrangement with Federal agencies.

§ 102–74.75 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?

No. Section 636 of Public Law 104–52 prohibits the sale of tobacco products in vending machines in Government-owned and leased space. The Administrator of GSA or the head of an Agency may designate areas not subject to the prohibition, if minors are prohibited and reports are made to the appropriate committees of Congress.

§§ 102–74.80–102–74.95 [Reserved]

CONSERVATION PROGRAMS

§ 102–74.100 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).

ASSET SERVICES

§ 102–74.105 What are asset services?

Asset services include repairs (other than those minor repairs identified in § 102–74.35(a)), alterations and modernizations for real property assets. Typically, these are the types of repairs and alterations necessary to preserve or enhance the value of the real property asset.

§ 102–74.110 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 § 102–74.35(a)), alterations, and modernizations for real property assets. For repairs and alterations projects for which the estimated cost exceeds the prospectus threshold, Federal agencies must follow the prospectus submission and approval policy identified in this part and part 102–73 of this chapter.

§ 102–74.115 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.

§ 102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?

No. A prospectus does not need to be submitted before emergency alterations are performed, but GSA must submit a prospectus as soon as possible after the emergency. Federal agencies must immediately alter a building if the alteration protects people, buildings, or equipment, saves lives, and/or avoids further property damage. Federal agencies can take these actions in an emergency before GSA submits a prospectus on the alterations to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure.

§ 102–74.125 Are prospectuses required for reimbursable alteration projects?

A project that is to be financed in whole or in part from funds appropriated to the requesting agency may be performed without a prospectus if—

(a) Payment is made from agency appropriations that are not subject to 40 U.S.C. 3307; and

(b) GSA's portion of the cost, if any, does not exceed the prospectus threshold.

§ 102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?

Yes, if requested by a Federal agency, GSA will prepare a prospectus for a reimbursable alteration project.

§ 102–74.135 Who selects construction and alteration projects that are to be performed?

The Administrator of General Services selects construction and alteration projects to be performed.

§ 102–74.140 On what basis does the Administrator select construction and alteration projects?

The Administrator selects projects based on a continuing investigation and survey of the public building needs of the Federal Government. These projects must be equitably distributed throughout the United States, with due consideration given to each project's comparative urgency.

§ 102–74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?

Federal agencies identifying a need for construction or alteration of a public building must provide information, such as a description of the work, location, estimated maximum cost, and justification to the Administrator of General Services.

§ 102–74.150 Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?

The Administrator of General Services must submit prospectuses for public building construction or alteration projects to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for approval.

ENERGY CONSERVATION

§ 102–74.155 What energy conservation policy must Federal agencies follow in the management of facilities?

Federal agencies must—

(a) Comply with the energy conservation guidelines in 10 CFR part 436 (Federal Energy Management and Planning Programs); and

(b) Observe the energy conservation policies cited in this part.

§ 102–74.160 What actions must Federal agencies take to promote energy conservation?

Federal agencies must—

(a) Turn off lights and equipment when not needed;

(b) Not block or impede ventilation; and

(c) Keep windows and other building accesses closed during the heating and cooling seasons.

§ 102–74.165 What energy standards must Federal agencies follow for existing facilities?

Existing Federal facilities must meet the energy standards prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North American in ASHRAE/IES Standard 90A–1980, as amended by the Department of Energy. Federal agencies must apply these energy standards where they can be achieved through life cycle, cost effective actions.

§ 102–74.170 May exceptions to the energy conservation policies in this subpart be granted?

Yes, the Federal agency buildings manager may grant exceptions to the foregoing policies in this subpart to enable agencies to accomplish their missions more effectively and efficiently.

§ 102–74.175 Are Government-leased buildings required to conform with the policies in this subpart?

Yes, all new lease contracts must be in conformance with the policies prescribed in this subpart. Federal agencies must administer existing lease contracts in accordance with these policies to the maximum extent feasible.

§ 102–74.180 What illumination levels must Federal agencies maintain on Federal facilities?

Except where special circumstances exist, Federal agencies must maintain illumination levels at—

(a) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (for visually difficult or critical tasks, additional lighting may be authorized by the Federal agency buildings manager);

(b) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(c) 10 foot-candles, but not less than 1 foot-candle, in non-work areas, during working hours (normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas); and

(d) Levels essential for safety and security purposes, including exit signs and exterior lights.

§ 102–74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?

Within the limitations of the building systems, Federal agencies must—

(a) Operate heating and cooling systems in the most overall energy efficient and economical manner;

(b) Maintain temperatures to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices;

(c) Set heating temperatures no higher than 55 degrees Fahrenheit during non-working hours;

(d) Not provide air-conditioning during non-working hours, except as necessary to return space temperatures to a suitable level for the beginning of working hours;

(e) Not permit reheating, humidification and simultaneous heating and cooling; and

(f) Operate building systems as necessary during extreme weather conditions to protect the physical condition of the building.

§ 102–74.190 Are portable heaters, fans and other such devices allowed in Government-controlled facilities?

Federal agencies are prohibited from operating portable heaters, fans, and other such devices in Government-controlled facilities unless authorized by the Federal agency buildings manager.

§ 102–74.195 What ventilation policy must Federal agencies follow?

During working hours in periods of heating and cooling, Federal agencies must provide ventilation in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality, where physically practical. Where not physically practical, Federal agencies must provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329–2305.

§ 102–74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?

Federal agencies, upon approval of GSA, must report to the DOE the energy consumption in buildings, facilities, vehicles, and equipment within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy Usage Report DOE F 6200.2 Instructions.

RIDESHARING

§ 102–74.205 What Federal facility ridesharing policy must Executive agencies follow?

(a) In accordance with Executive Order 12191, ''Federal Facility Ridesharing Program'' (3 CFR, 1980 Comp.,

p. 138), 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.

(b) In accordance with the Federal Employees Clean Air Incentives Act (Public Law 103–172), the Federal Government is required to take steps to improve the air quality, and to reduce traffic congestion by providing for the establishment of programs that encourage Federal employees to commute to work by means other than single-occupancy motor vehicles.

(c) In accordance with the Transportation Equity Act for the 21st Century (Public Law 105–178), employers, including the Federal Government, are to offer employees transportation fringe benefits.

§ 102–74.210 What steps must Executive agencies take to promote ridesharing at Federal facilities?

(a) Under Executive Order 12191, ''Federal Facility Ridesharing Program,'' agencies shall—

(1) Establish an annual ridesharing goal for each facility; and

(2) Cooperate with State and local ridesharing agencies where such agencies exist.

(b) Under the Federal Employees Clean Air Incentives Act (Public Law 103–172), agencies shall—

(1) Issue transit passes or similar vouchers to exchange for transit passes;

(2) Furnish space, facilities, and services to bicyclists;

(3) Provide non-monetary incentives as provided by other provisions of law or other authority; and

(4) Submit biennially to GSA (as directed in House of Representatives Report 103–356, dated November 10, 1993) a report that covers—

(i) Agency programs offered under Public law 103–172;

(ii) Description of each program;

(iii) Extent of employee participation in, and costs to the Government associated with, each program;

(iv) Assessment of environmental or other benefits realized from these programs; and

(v) Other matters that may be appropriate under Public Law 103–172.

(c) In accordance with the Transportation Equity Act for the 21st Century, agencies may (in lieu of or in combination with other commuter benefits) provide fringe benefits to qualified commuters, at no cost, by giving them a monthly pretax payroll deduction to support and encourage the use of mass transportation systems.

§§ 102–74.215–102–74.225 [Reserved]

OCCUPANT EMERGENCY PROGRAM

§ 102–74.230 Who is responsible for establishing an occupant emergency program?

The Designated Official (as defined in § 102–71.20 of this chapter) is responsible for developing, implementing and maintaining an Occupant Emergency Plan (as defined in § 102–71.20 of this chapter). The Designated Official's responsibilities include establishing, staffing and training an Occupant Emergency Organization with agency employees. Federal agencies, upon approval from GSA, must assist in the establishment and maintenance of such plans and organizations.

§ 102–74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?

Yes, all occupant agencies of a facility must fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

§ 102–74.240 What are Federal agencies' occupant emergency responsibilities?

Federal agencies, upon approval from GSA, must—

(a) Provide emergency program policy guidance;

(b) Review plans and organizations annually;

(c) Assist in training of personnel;

(d) Otherwise provide for the proper administration of Occupant Emergency

Programs (as defined in § 102–71.20 of this chapter);

(e) Solicit the assistance of the lessor in the establishment and implementation of plans in leased space; and

(f) Assist the Occupant Emergency Organization (as defined in § 102–71.20 of this chapter) by providing technical personnel qualified in the operation of utility systems and protective equipment.

§ 102–74.245 Who makes the decision to activate the Occupant Emergency Organization?

The decision to activate the Occupant Emergency Organization must be made by the Designated Official, or by the designated alternate official. After normal duty hours, the senior Federal official present must represent the Designated Official or his/her alternates and must initiate action to cope with emergencies in accordance with the plans.

§ 102–74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?

The Designated Official must make a decision to activate the Occupant Emergency Organization based upon the best available information, including—

(a) An understanding of local tensions;

(b) The sensitivity of target agency(ies);

(c) Previous experience with similar situations;

(d) Advice from the Federal agency buildings manager;

(e) Advice from the appropriate Federal law enforcement official; and

(f) Advice from Federal, State, and local law enforcement agencies.

§ 102–74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat)?

The Designated Official must initiate action to evacuate or relocate occupants in accordance with the plan by sounding the fire alarm system or by other appropriate means when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

§ 102–74.260 What action must the Designated Official initiate when there is advance notice of an emergency?

The Designated Official must initiate appropriate action according to the plan when there is advance notice of an emergency.

PARKING FACILITIES

§ 102–74.265 Who must provide for the regulation and policing of parking facilities?

Federal agencies, upon approval from GSA, must provide for any necessary regulation and policing of parking facilities, which may include—

(a) The issuance of traffic rules and regulations;

(b) The installation of signs and markings for traffic control (Signs and markings must conform with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(c) The issuance of citations for parking violations; and

(d) The immobilization or removal of illegally parked vehicles.

§ 102–74.270 Are vehicles required to display parking permits in parking facilities?

When the use of parking space is controlled as in § 102–74.265, all privately owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available spaces regularly exceeds the demand for such spaces.

§ 102–74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate and police parking facilities?

Yes, Federal agencies, upon approval from GSA, may authorize lessors or parking management contractors to manage, regulate and police parking facilities.

§ 102–74.280 Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?

Federal agencies must not permit privately owned vehicles converted for propane carburetion to enter underground parking facilities unless the owner provides to the occupant agency and the Federal agency buildings manager the installer's certification that the installation methods and equipment comply with National Fire Protection Association (NFPA) Standard No. 58.

§ 102–74.285 How must Federal agencies assign priority to parking spaces in controlled areas?

Federal agencies must reserve official parking spaces, in the following order of priority, for—

(a) Official postal vehicles at buildings containing the U.S. Postal Service's mailing operations;

(b) Federally owned vehicles used to apprehend criminals, fight fires and handle other emergencies;

(c) Private vehicles owned by Members of Congress (but not their staffs);

(d) Private vehicles owned by Federal judges (appointed under Article III of the Constitution), which may be parked in those spaces assigned for the use of the Court, with priority for them set by the Administrative Office of the U.S. Courts;

(e) Other Federally owned and leased vehicles, including those in motor pools or assigned for general use;

(f) Service vehicles, vehicles used in child care center operations, and vehicles of patrons and visitors (Federal agencies must allocate parking for disabled visitors whenever an agency's mission requires visitor parking); and

(g) Private vehicles owned by employees, using spaces not needed for official business.

However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or equitable, taking into account the priority for official parking set forth in this section.

§ 102–74.290 May Federal agencies allow employees to use parking spaces not required for official needs?

Yes, Federal agencies may allow employees to use parking spaces not required for official needs.

§ 102–74.295 Who determines the number of employee parking spaces for each facility?

The Federal agency buildings manager must determine the total number of spaces available for employee parking. Typically, Federal agencies must make a separate determination for each parking facility. However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or more equitably available.

§ 102–74.300 How must space available for employee parking be allocated among occupant agencies?

The Federal agency buildings manager must allocate space available for employee parking among occupant agencies on an equitable basis, such as by allocating such parking in proportion to each agency's share of building space, office space or total employee population, as appropriate. In certain cases, Federal agencies may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper parking allocations among the occupant agencies.

§ 102–74.305 How must Federal agencies assign available parking spaces to their employees?

Federal agencies must assign available parking spaces to their employees using the following order of priority:

(a) Severely disabled employees (see definition in § 102–71.20 of this chapter).

(b) Executive personnel and persons who work unusual hours.

(c) Vanpool/carpool vehicles.

(d) Privately owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.

(e) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

§ 102–74.310 What measures must Federal agencies take to improve the utilization of parking facilities?

Federal agencies must take all feasible measures to improve the utilization of parking facilities, including—

(a) The conducting of surveys and studies;

(b) The periodic review of parking space allocations;

(c) The dissemination of parking information to occupant agencies;

(d) The implementation of parking incentives that promote ridesharing;

(e) The use of stack parking practices, where appropriate; and

(f) The employment of parking management contractors and concessionaires, where appropriate.

SMOKING

§ 102–74.315 What is the smoking policy for interior space in Federal facilities?

Pursuant to Executive Order 13058, ''Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace'' (3 CFR, 1997 Comp., p. 216), it is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the executive branch of the Federal Government.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.320 Are there any exceptions to the smoking policy for interior space in Federal facilities?

Yes, the smoking policy does not apply in—

(a) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(b) Portions of Federally owned buildings leased, rented or otherwise provided in their entirety to non-Federal parties;

(c) Places of employment in the private sector or in other non-Federal Governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(d) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head and, to the fullest extent possible, provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.325 Are designated smoking areas authorized in interior space?

No, unless specifically established by an agency head as provided by § 102–74.320(d). A previous exception for designated smoking areas is being eliminated. All designated interior smoking areas will be closed effective June 19, 2009. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.330 What smoking restrictions apply to outside areas under Executive branch control?

Effective June 19, 2009, smoking is prohibited in courtyards and within twenty-five (25) feet of doorways and air intake ducts on outdoor space under the jurisdiction, custody or control of GSA. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5

U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.335 Who is responsible for furnishing and installing signs concerning smoking restrictions in the building, and in and around building entrance doorways and air intake ducts?

Federal agency building managers are responsible for furnishing and installing suitable, uniform signs in the building, and in and around building entrance doorways and air intake ducts, reading ''No Smoking,'' ''No Smoking Except in Designated Areas,'' ''No Smoking Within 25 Feet of Doorway,'' or ''No Smoking Within 25 Feet of Air Duct,'' as applicable.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.340 Who is responsible for monitoring and controlling areas designated for smoking by an agency head and for identifying those areas with proper signage?

Agency heads are responsible for monitoring and controlling areas designated by them under § 102–74.320(d) for smoking and identifying these areas with proper signage. Suitable, uniform signs reading ''Designated Smoking Area'' must be furnished and installed by the occupant agency.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.345 Does the smoking policy in this part apply to the judicial branch?

This smoking policy applies to the judicial branch when it occupies space in buildings controlled by the executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as provided in § 102–74.320(d).

[73 FR 77518, Dec. 19, 2008]

§ 102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?

Yes. Where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act, 5 U.S.C. Ch. 71, Labor-Management Relations, prior to implementing this section. In all other cases, agencies may consult directly with employees.

[73 FR 77518, Dec. 19, 2008]

§ 102–74.351 If a state or local government has a smoke-free ordinance that is more strict than the smoking policy for Federal facilities, does the state or local law or Federal policy control?

The answer depends on whether the facility is Federally owned or privately owned. If the facility is Federally owned, then Federal preemption principles apply and the Federal policy controls. If the facility is privately owned, then Federal tenants are subject to the provisions of the state or local ordinance, even in the Federally leased space, if the state or local restrictions are more stringent than the Federal policy.

[73 FR 77518, Dec. 19, 2008]

ACCIDENT AND FIRE PREVENTION

§ 102–74.355 With what accident and fire prevention standards must Federal facilities comply?

To the maximum extent feasible, Federal agencies must manage facilities in accordance with the accident and fire prevention requirements identified in § 102–80.80 of this chapter.

§ 102–74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?

Each occupant agency must—

(a) Participate in at least one fire drill per year;

(b) Maintain a neat and orderly facility to minimize the risk of accidental injuries and fires;

(c) Keep all exits, accesses to exits and accesses to emergency equipment clear at all times;

(d) Not bring hazardous, explosive or combustible materials into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided;

(e) Use only draperies, curtains or other hanging materials that are made of non-combustible or flame-resistant fabric;

(f) Use only freestanding partitions and space dividers that are limited combustible, and fabric coverings that are flame resistant;

(g) Cooperate with GSA to develop and maintain fire prevention programs that provide the maximum safety for the occupants;

(h) Train employees to use protective equipment and educate employees to take appropriate fire safety precautions in their work;

(i) Keep facilities in the safest condition practicable, and conduct periodic inspections in accordance with Executive Order 12196 and 29 CFR part 1960;

(j) Immediately report accidents involving personal injury or property damage, which result from building system or maintenance deficiencies, to the Federal agency building manager; and

(k) Appoint a safety, health and fire protection liaison to represent the occupant agency with GSA.

Subpart C—Conduct on Federal Property

APPLICABILITY

§ 102–74.365 To whom does this subpart apply?

The rules in this subpart apply to all property under the authority of GSA and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.

INSPECTION

§ 102–74.370 What items are subject to inspection by Federal agencies?

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

ADMISSION TO PROPERTY

§ 102–74.375 What is the policy on admitting persons to Government property?

Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the

applicable provisions is a violation of these regulations.

PRESERVATION OF PROPERTY

§ 102–74.380 What is the policy concerning the preservation of property?

All persons entering in or on Federal property are prohibited from—

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things; or

(e) Throwing articles of any kind from or at a building or climbing upon statues, fountains or any part of the building.

CONFORMITY WITH SIGNS AND DIRECTIONS

§ 102–74.385 What is the policy concerning conformity with official signs and directions?

Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

DISTURBANCES

§ 102–74.390 What is the policy concerning disturbances?

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

GAMBLING

§ 102–74.395 What is the policy concerning gambling?

(a) Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This provision is not intended to prohibit prize drawings for personal property at otherwise permitted functions on Federal property, provided that the game or drawing does not constitute gambling per se. Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize.

NARCOTICS AND OTHER DRUGS

§ 102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

ALCOHOLIC BEVERAGES

§ 102–74.405 What is the policy concerning the use of alcoholic beverages?

Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from

being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

SOLICITING, VENDING AND DEBT COLLECTION

§ 102–74.410 What is the policy concerning soliciting, vending and debt collection?

All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for—

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled ''Solicitation Of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations,'' and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

POSTING AND DISTRIBUTING MATERIALS

§ 102–74.415 What is the policy for posting and distributing materials?

All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, as mandated by Section 636 of Public Law 104–52;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

PHOTOGRAPHS FOR NEWS, ADVERTISING OR COMMERCIAL PURPOSES

§ 102–74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

DOGS AND OTHER ANIMALS

§ 102–74.425 What is the policy concerning dogs and other animals on Federal property?

No person may bring dogs or other animals on Federal property for other

than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

BREASTFEEDING

§ 102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

Yes. Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

VEHICULAR AND PEDESTRIAN TRAFFIC

§ 102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

EXPLOSIVES

§ 102–74.435 What is the policy concerning explosives on Federal property?

No person entering or while on Federal property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

WEAPONS

§ 102–74.440 What is the policy concerning weapons on Federal property?

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

NONDISCRIMINATION

§ 102–74.445 What is the policy concerning discrimination on Federal property?

Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

PENALTIES

§ 102–74.450 What are the penalties for violating any rule or regulation in this subpart?

A person found guilty of violating any rule or regulation in this subpart while on any property under the charge and control of GSA shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

IMPACT ON OTHER LAWS OR REGULATIONS

§ 102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

Subpart D—Occasional Use of Public Buildings

§ 102–74.460 What is the scope of this subpart?

This subpart establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2).

APPLICATION FOR PERMIT

§ 102–74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

Yes, any person or organization wishing to use a public area must file an application for a permit from the Federal agency buildings manager.

§ 102–74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

Applicants must submit the following information:

(a) Their full names, mailing addresses, and telephone numbers.

(b) The organization sponsoring the proposed activity.

(c) The individual(s) responsible for supervising the activity.

(d) Documentation showing that the applicant has authority to represent the sponsoring organization.

(e) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

§ 102–74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

Yes, if an applicant proposes to use a public area to solicit funds, the applicant must certify, in writing, that—

(a) The applicant is a representative of and will be soliciting funds for the sole benefit of a religion or religious group; or

(b) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still pending.

PERMITS

§ 102–74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?

Federal agencies must issue permits within 10 working days following the receipt of the completed applications, unless the permit is disapproved in accordance with § 102–74.500.

§ 102–74.485 Is there any limitation on the length of time of a permit?

Yes, a permit may not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the Regional Officer (as defined in § 102–71.20 of this chapter). After the expiration of a permit, Federal agencies may issue a new permit upon submission of a new application. In such a case, applicants may incorporate by reference all required information filed with the prior application.

§ 102–74.490 What if more than one permit is requested for the same area and time?

Federal agencies will issue permits on a first-come, first-served, basis when more than one permit is requested for the same area and times.

§ 102–74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?

Before approving a permit application, Federal agencies must coordinate

with their law enforcement organization if a permit involves demonstrations or activities that may lead to civil disturbances.

DISAPPROVAL OF APPLICATIONS OR CANCELLATION OF PERMITS

§ 102–74.500 Can Federal agencies disapprove permit applications or cancel issued permits?

Yes, Federal agencies may disapprove any permit application or cancel an issued permit if—

(a) The applicant has failed to submit all information required under §§ 102–74.470 and 102–74.475, or has falsified such information;

(b) The proposed use is a commercial activity as defined in § 102–71.20 of this chapter;

(c) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(d) The proposed use is intended to influence or impede any pending judicial proceeding;

(e) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461–65; or

(f) The proposed use violates the prohibition against political solicitations in 18 U.S.C. 607.

§ 102–74.505 What action must Federal agencies take after disapproving an application or canceling an issued permit?

Upon disapproving an application or canceling a permit, Federal agencies must promptly—

(a) Notify the applicant or permittee of the reasons for the action; and

(b) Inform the applicant or permittee of his/her appeal rights under § 102–74.510.

APPEALS

§ 102–74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?

A person or organization may appeal the disapproval of an application or cancellation of an issued permit by notifying the Regional Officer (as defined in § 102–71.20 of this chapter), in writing, of the intent to appeal within 5 calendar days of the notification of disapproval or cancellation.

§ 102–74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?

Yes, during the appeal process, the affected person or organization and the Federal agency buildings manager will have an opportunity to state their positions on the issues, both verbally and in writing.

§ 102–74.520 How much time does the Regional Officer have to affirm or reverse the Federal agency buildings manager's decision after receiving the notification of appeal from the affected person or organization?

The Regional Officer must affirm or reverse the Federal agency buildings manager's decision, based on the information submitted, within 10 calendar days of the date on which the Regional Officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The Regional Officer will promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefor.

SCHEDULE OF USE

§ 102–74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair and construction?

Yes, Federal agencies may reserve certain time periods for use of public areas—

(a) For official Government business; or

(b) For maintenance, repair, and construction.

HOURS OF USE

§ 102–74.530 When may public areas be used?

Permittees may use public areas during or after regular working hours of Federal agencies, provided that such

uses will not interfere with Government business. When public areas are used by permittees after normal working hours, Federal agencies must lock, barricade or identify by signs, as appropriate, all adjacent areas not approved for such use to restrict permittees' activities to approved areas.

SERVICES AND COSTS

§ 102–74.535 What items may Federal agencies provide to permittees free of charge?

Federal agencies may provide to permittees at no cost—

(a) Space; and

(b) Services normally provided at the building in question during normal hours of building operation, such as security, cleaning, heating, ventilation, and air-conditioning. The Regional Officer must approve an applicant's request to provide its own services, such as security and cleaning, prior to permit approval.

§ 102–74.540 What are the items for which permittees must reimburse Federal agencies?

Permittees must reimburse Federal agencies for services over and above those normally provided during normal business hours. Federal agencies may provide the services free of charge if the cost is insignificant and if it is in the public interest.

§ 102–74.545 May permittees make alterations to the public areas?

Permittees must not make alterations to public areas, except with the prior written approval of the Federal agency buildings manager. Federal agencies must not approve such alterations unless the Federal agency determines that the proposed alterations to a building should be made to encourage and aid in the proposed use. Permittees making alterations must ensure the safety of users and prevent damage to property.

§ 102–74.550 What items are permittees responsible for furnishing?

Permittees are responsible for furnishing items such as tickets, audio-visual equipment, and other items that are necessary for the proposed use.

CONDUCT

§ 102–74.555 What rules of conduct must all permittees observe while on Federal property?

Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in subpart C of this part. In addition, a permittee must—

(a) Not misrepresent his or her identity to the public;

(b) Not conduct any activities in a misleading or fraudulent manner;

(c) Not discriminate on the basis of race, creed, religion, age, color, disability, sex, or national origin in conducting activities;

(d) Not distribute any item, nor post or otherwise affix any item, for which prior written approval under § 102–74.415 has not been obtained;

(e) Not leave leaflets or other materials unattended on the property;

(f) Not engage in activities that would interfere with the preferences afforded blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107); and

(g) Display identification badges while on Federal property, if engaging in the solicitation of funds as authorized by § 102–74.475. Each badge must indicate the permittee's name, address, telephone number, and organization.

NON-AFFILIATION WITH THE GOVERNMENT

§ 102–74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?

Yes, Federal agencies reserve the right to advise the public through signs or announcements of the presence of any permittees and of their non-affiliation with the Federal Government.

Subpart E—Installing, Repairing, and Replacing Sidewalks

§ 102–74.565 What is the scope of this subpart?

In accordance with 40 U.S.C. 589, Federal agencies must comply with the real property policies in this subpart governing the installation, repair and replacement of sidewalks around buildings, installations, properties, or

grounds under the control of Executive agencies and owned by the United States.

§ 102–74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?

No, the Federal Government must fund the cost of installing, repairing, and replacing sidewalks. Funds appropriated to the agency for installation, repair, and maintenance, generally, must be available for expenditure to accomplish the purposes of this subpart.

§ 102–74.575 How do Federal agencies arrange for work on sidewalks?

Upon approval from GSA, Federal agencies may—

(a) Authorize the appropriate State or local government to install, repair and replace sidewalks, or arrange for this work, and reimburse them for this work; or

(b) Contract or otherwise arrange and pay directly for installing, repairing and/or replacing sidewalks.

§ 102–74.580 Who decides when to replace a sidewalk?

Federal agencies, giving due consideration to State and local standards and specifications for sidewalks, decide when to install, repair or replace a sidewalk. However, Federal agencies may prescribe other standards and specifications for sidewalks whenever necessary to achieve architectural harmony and maintain facility security.

Subpart F—Telework

§ 102–74.585 What Federal facility telework policy must Executive agencies follow?

Executive agencies must follow these telework policies:

(a) In accordance with Section 359 of Public Law 106–346, each Executive agency must establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance. Public 106–346 became effective on October 23, 2000, and required the Director of the Office of Personnel Management (OPM) to ensure the application and implementation of Section 359 to 25 percent of the Federal workforce by April 2001, and to an additional 25 percent of such workforce each year thereafter. Thus, the law provides that its requirements must be applied to 100 percent of the Federal workforce by April 2004.

(b) In accordance with 40 U.S.C. 587, when considering whether to acquire any space, quarters, buildings, or other facilities for use by employees of any Executive agency, the head of that agency shall consider whether the need for the facilities can be met using alternative workplace arrangements.

§ 102–74.590 What steps must agencies take to implement these laws and policies?

(a) As interpreted by OPM Memorandum to agencies (February 9, 2001), Public Law 106–346 instructs Federal agencies to—

(1) Review telework barriers, act to remove them, and increase actual participation;

(2) Establish eligibility criteria; and

(3) Subject to any applicable agency policies or bargaining obligations, allow employees who meet the criteria and want to participate the opportunity if they are satisfactory performers.

(b) 40 U.S.C. 587 requires agencies considering the acquisition of facilities for use by Federal employees to consider whether the facility need can be met using alternative workplace arrangements, such as telecommuting, hoteling, virtual offices, and other distributive work arrangements. If the agency needs assistance in this investigation and/or subsequent application of alternative workplace arrangements, GSA will provide guidance, assistance, and oversight, as needed, regarding establishment and operation of alternative workplace arrangements.

(c) Agencies evaluating alternative workplace arrangements should also make these evaluations in coordination with Integrated Workplace policies and strategies. See § 102–79.110.

§ 102–74.595 How can agencies obtain guidance, assistance, and oversight regarding alternative workplace arrangements from GSA?

Agencies may request assistance from the GSA/PBS regional office responsible for providing space in the geographic area under consideration.

§ 102–74.600 Should Federal agencies utilize telework centers?

Yes. In accordance with Public Law 107–217 (August 21, 2002), each of the following departments and agencies, in each fiscal year, must make at least $50,000 available from amounts provided for salaries and expenses for carrying out a flexiplace work telecommuting program (i.e., to pay telework center program user fees):

(a) Department of Agriculture.
(b) Department of Commerce.
(c) Department of Defense.
(d) Department of Education.
(e) Department of Energy.
(f) Department of Health and Human Services.
(g) Department of Housing and Urban Development.
(h) Department of the Interior.
(i) Department of Justice.
(j) Department of Labor.
(k) Department of State.
(l) Department of Transportation.
(m) Department of the Treasury.
(n) Department of Veterans Affairs.
(o) Environmental Protection Agency.
(p) General Services Administration.
(q) Office of Personnel Management.
(r) Small Business Administration.
(s) Social Security Administration.
(t) United States Postal Service.

APPENDIX TO PART 102–74—RULES AND REGULATIONS GOVERNING CONDUCT ON FEDERAL PROPERTY

FEDERAL MANAGEMENT REGULATIONS

TITLE 41, CODE OF FEDERAL REGULATIONS, PART 102–74, SUBPART C

Applicability (41 CFR 102–74.365). The rules in this subpart apply to all property under the authority of the U.S. General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to part 102–74 at each public entrance to each Federal facility.

Inspection (41 CFR 102–74.370). Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

Admission to Property (41 CFR 102–74.375). Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

Preservation of Property (41 CFR 102–74.380). All persons entering in or on Federal property are prohibited from—

(a) Improperly disposing of rubbish on property;
(b) Willfully destroying or damaging property;
(c) Stealing property;
(d) Creating any hazard on property to persons or things; and
(e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building.

Conformity with Signs and Directions (41 CFR 102–74.385). Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature

and with the lawful direction of Federal police officers and other authorized individuals.

Disturbances (41 CFR 102–74.390). All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

Gambling (41 CFR 102–74.395). Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

(a) Participating in games for money or other personal property;

(b) Operating gambling devices;

(c) Conducting a lottery or pool; or

(d) Selling or purchasing numbers tickets.

Narcotics and Other Drugs (41 CFR 102–74.400). Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

Alcoholic Beverages (41 CFR 102–74.405). Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

Soliciting, Vending and Debt Collection (41 CFR 102–74.410). All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations; vending merchandise of all kinds; displaying or distributing commercial advertising, or collecting private debts, except for—

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled ''Solicitation of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations,'' and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Public Law 95–454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 581(h)). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

Posting and Distributing Materials (41 CFR 102–74.415). All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104–52, Section 636;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in §102–74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills, or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in §102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

Photographs for News, Advertising, or Commercial Purposes (41 CFR 102–74.420). Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

Dogs and Other Animals (41 CFR 102–74.425). No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

Breastfeeding (41 CFR 102–74.426). Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

Vehicular and Pedestrian Traffic (41 CFR 102–74.430). All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

Explosives (41 CFR 102–74.435). No person entering or while on property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

Weapons (41 CFR 102–74.440). Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

Nondiscrimination (41 CFR 102–74.445). Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Penalties (41 CFR 102–74.450). A person found guilty of violating any rule or regulation in subpart C of this part while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

Impact on Other Laws or Regulations (41 CFR 102–74.455). No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

WARNING—WEAPONS PROHIBITED

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

PART 102–75—REAL PROPERTY DISPOSAL

Subpart A—General Provisions

Sec.
102–75.5 What is the scope of this part?
102–75.10 What basic real property disposal policy governs disposal agencies?

REAL PROPERTY DISPOSAL SERVICES

102–75.15 What real property disposal services must disposal agencies provide under a delegation of authority from GSA?
102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

Subpart B—Utilization of Excess Real Property

102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?
102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?
102–75.35 [Reserved]

STANDARDS

102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?

102–75.45 What does the term ''Not utilized'' mean?
102–75.50 What does the term ''Underutilized'' mean?
102–75.55 What does the term ''Not being put to optimum use'' mean?

GUIDELINES

102–75.60 What are landholding agencies' responsibilities concerning real property surveys?
102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?
102–75.70 Are their any exceptions to this notification policy?
102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?
102–75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?
102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?
102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?
102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?

LAND WITHDRAWN OR RESERVED FROM THE PUBLIC DOMAIN

102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?
102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

TRANSFERS UNDER OTHER LAWS

102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?

REPORTING OF EXCESS REAL PROPERTY

102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?
102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

TITLE REPORT

102–75.125 What information must agencies include in the title report?
102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include on the title report?
102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?

OTHER NECESSARY INFORMATION

102–75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

EXAMINATION FOR ACCEPTABILITY

102–75.145 Is GSA required to review each report of excess?
102–75.150 What happens when GSA determines that the report of excess is adequate?
102–75.155 What happens if GSA determines that the report of excess is insufficient?

DESIGNATION AS PERSONAL PROPERTY

102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?
102–75.165 Should related personal property be designated real or personal property for disposition purposes?
102–75.170 What happens to the related personal property in a structure scheduled for demolition?

TRANSFERS

102–75.175 What are GSA's responsibilities regarding transfer requests?
102–75.180 May landholding agencies transfer excess real property without notifying GSA?
102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?
102–75.190 What amount must the transferee agency pay for the transfer of excess real property?
102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?
102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?
102–75.205 Are transfers ever made without reimbursement by the transferee agency?
102–75.210 What must a transferee agency include in its request for an exception

from the 100 percent reimbursement requirement?
102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?
102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?
102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?
102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?
102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

TEMPORARY UTILIZATION

102–75.240 May excess real property be temporarily assigned/reassigned?

NON-FEDERAL INTERIM USE OF EXCESS PROPERTY

102–75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?

Subpart C—Surplus Real Property Disposal

102–75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?
102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?
102–75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?
102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

APPLICABILITY OF ANTITRUST LAWS

102–75.270 Must antitrust laws be considered when disposing of property?
102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?
102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?
102–75.285 Can a disposal agency dispose of real property to a private interest specified in §102–75.270 before advice is received from the Attorney General?

DISPOSALS UNDER OTHER LAWS

102–75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?

CREDIT DISPOSALS

102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

DESIGNATION OF DISPOSAL AGENCIES

102–75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?
102–75.297 Are there any exceptions to when landholding agencies may serve as the disposal agency?
102–75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in §102–75.296?
102–75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

APPRAISAL

102–75.300 Are appraisals required for all real property disposal transactions?
102–75.305 What type of appraisal value must be obtained for real property disposal transactions?
102–75.310 Who must agencies use to appraise the real property?
102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?
102–75.320 Does appraisal information need to be kept confidential?

INSPECTION

102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

SUBMISSION OF OFFERS TO PURCHASE OR LEASE

102–75.330 What form must all offers to purchase or lease be in?

PROVISIONS RELATING TO ASBESTOS

102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

PROVISIONS RELATING TO HAZARDOUS SUBSTANCE ACTIVITY

102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

PUBLIC BENEFIT CONVEYANCES

102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?
102–75.351 May the disposal agency waive screening for public benefit conveyances?
102–75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?
102–75.360 What wording must be in the nondiscrimination clause that is required in the offer to purchase and the conveyance document?

POWER TRANSMISSION LINES

102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?
102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

PROPERTY FOR PUBLIC AIRPORTS

102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?
102–75.390 What does the term ''surplus airport property'' mean?
102–75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?
102–75.400 Is industrial property located on an airport also considered to be ''airport property''?
102–75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?
102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?
102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?
102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?
102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?
102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?
102–75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970) apply to the transfer of airports to State and local agencies?

PROPERTY FOR USE AS HISTORIC MONUMENTS

102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?
102–75.445 Who can convey surplus real and related personal property for historic monument use?
102–75.450 What type of property is suitable or desirable for use as a historic monument?
102–75.455 May historic monuments be used for revenue-producing activities?
102–75.460 What information must disposal agencies furnish eligible public agencies?
102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?
102–75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?
102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?
102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?
102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?

PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?
102–75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?
102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?
102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?
102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?
102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?
102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?
102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?
102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?
102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?
102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?

PROPERTY FOR PROVIDING SELF-HELP HOUSING OR HOUSING ASSISTANCE

102–75.550 What does ''self-help housing or housing assistance'' mean?
102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?
102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?
102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?
102–75.570 What happens if the disposal agency does not approve the assignment recommendation?
102–75.575 Who notifies nonprofit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?
102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?
102–75.590 What does the assignment recommendation contain?
102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?
102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?
102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?
102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?
102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?
102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?

PROPERTY FOR USE AS PUBLIC PARK OR RECREATION AREAS

102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?
102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?

102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?
102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?
102–75.650 When must DOI request assignment of the property?
102–75.655 What does the assignment recommendation contain?
102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?
102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?
102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?
102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?
102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?
102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?
102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

PROPERTY FOR DISPLACED PERSONS

102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?
102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?
102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?
102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?
102–75.715 When can a Federal agency request transfer of the property to the selected State agency?
102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?
102–75.725 What does the transfer request contain?
102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?
102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?
102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?
102–75.745 What happens if the property transfer request is not approved by the disposal agency?

PROPERTY FOR CORRECTIONAL FACILITY, LAW ENFORCEMENT, OR EMERGENCY MANAGEMENT RESPONSE PURPOSES

102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?
102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?
102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?
102–75.765 What does the term ''law enforcement'' mean?
102–75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?
102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?
102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?
102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?

102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?
102–75.800 What information must be included in the deed of conveyance?
102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?
102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?
102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

PROPERTY FOR PORT FACILITY USE

102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?
102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?
102–75.830 What does the surplus notice contain?
102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?
102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?
102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?
102–75.855 What happens if DOT does not submit an assignment recommendation?
102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?
102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?
102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?
102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?

NEGOTIATED SALES

102–75.880 When may Executive agencies conduct negotiated sales?
102–75.885 What are the disposal agency's responsibilities concerning negotiated sales?
102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?
102–75.895 What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?
102–75.900 What is a negotiated sale for economic development purposes?

EXPLANATORY STATEMENTS FOR NEGOTIATED SALES

102–75.905 When must the disposal agency prepare an explanatory statement?
102–75.910 Are there any exceptions to this policy of preparing explanatory statements?
102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?
102–75.920 Where is the explanatory statement sent?
102–75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?
102–75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

PUBLIC SALES

102–75.935 What are disposal agencies' responsibilities concerning public sales?

DISPOSING OF EASEMENTS

102–75.936 When can an agency dispose of an easement?
102–75.937 Can an easement be released or disposed of at no cost?
102–75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?

GRANTING EASEMENTS

102–75.939 When can agencies grant easements?
102–75.940 Can agencies grant easements at no cost?
102–75.941 Does an agency retain responsibility for the easement?
102–75.942 What must agencies consider when granting easements?
102–75.943 What happens if granting an easement will reduce the value of the property?

NON-FEDERAL INTERIM USE OF SURPLUS PROPERTY

102–75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?

Subpart D—Management of Excess and Surplus Real Property

102–75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?

TAXES AND OTHER OBLIGATIONS

102–75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?

DECONTAMINATION

102–75.955 Who is responsible for decontaminating excess and surplus real property?

IMPROVEMENTS OR ALTERATIONS

102–75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?

PROTECTION AND MAINTENANCE

102–75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?

102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?

102–75.975 What happens if the property is not conveyed or disposed of during this time frame?

102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?

ASSISTANCE IN DISPOSITION

102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?

Subpart E—Abandonment, Destruction, or Donation to Public Bodies

102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?

DANGEROUS PROPERTY

102–75.995 May Federal agencies dispose of dangerous property?

DETERMINATIONS

102–75.1000 How is the decision made to abandon, destroy, or donate property?

102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?

102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?

RESTRICTIONS

102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?

DISPOSAL COSTS

102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?

ABANDONMENT AND DESTRUCTION

102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?

102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?

102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?

102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?

102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?

102–75.1050 Is there any property for which this subpart does not apply?

Subpart F—Delegations

DELEGATION TO THE DEPARTMENT OF DEFENSE (DOD)

102–75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?

102–75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

102–75.1065 When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?

102–75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?

DELEGATION TO THE DEPARTMENT OF AGRICULTURE (USDA)

102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?
102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?
102–75.1085 When using a delegation of real property disposal authority under this subpart, is the USDA required to report excess property to GSA?
102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?

DELEGATION TO THE DEPARTMENT OF THE INTERIOR

102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?
102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?
102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?

NATIVE AMERICAN-RELATED DELEGATIONS

102–75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?
102–75.1115 Are there any limitations or restrictions on this delegation of authority?
102–75.1120 Does the property have to be Federally screened?
102–75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?
102–75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?
102–75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

Subpart G—Conditional Gifts of Real Property to Further the Defense Effort

102–75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?
102–75.1145 What action must the Federal agency receiving an offer of a conditional gift take?
102–75.1150 What happens to the gift if GSA determines it to be acceptable?
102–75.1155 May an acceptable gift of property be converted to money?

Subpart H—Use of Federal Real Property to Assist the Homeless

DEFINITIONS

102–75.1160 What definitions apply to this subpart?

APPLICABILITY

102–75.1165 What is the applicability of this subpart?

COLLECTING THE INFORMATION

102–75.1170 How will information be collected?

SUITABILITY DETERMINATION

102–75.1175 Who issues the suitability determination?

REAL PROPERTY REPORTED EXCESS TO GSA

102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

SUITABILITY CRITERIA

102–75.1185 What are suitability criteria?

DETERMINATION OF AVAILABILITY

102–75.1190 What is the policy concerning determination of availability statements?

PUBLIC NOTICE OF DETERMINATION

102–75.1195 What is the policy concerning making public the notice of determination?

APPLICATION PROCESS

102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

ACTION ON APPROVED APPLICATIONS

102–75.1205 What action must be taken on approved applications?

UNSUITABLE PROPERTIES

102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

NO APPLICATIONS APPROVED

102–75.1215 What action must be taken if there is no expression of interest?

Subpart I—Screening Excess Federal Real Property

102–75.1220 How do landholding agencies find out if excess Federal real property is available?
102–75.1225 What details are provided in the ''Notice of Availability''?
102–75.1230 How long does an agency have to indicate its interest in the property?
102–75.1235 Where should an agency send its written response to the ''Notice of Availability''?
102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA's ''Notice of Availability''?
102–75.1245 What happens after the landholding agency properly responds to a ''Notice of Availability''?
102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?
102–75.1255 What happens when more than one agency has a valid interest in the property?
102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?
102–75.1265 Are extensions granted to the Federal screening and response timeframes?
102–75.1270 How does an agency request a transfer of Federal real property?
102–75.1275 Does a requesting agency have to pay for excess real property?
102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?
102–75.1285 How does GSA transfer excess real property to the requesting agency?
102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?

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Subpart A—General Provisions

§ 102–75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. Federal agencies with authority to dispose of real property under Subchapter III of Chapter 5 of Title 40 of the United States Code will be referred to as ''disposal agencies'' in this part. Except in rare instances where GSA delegates disposal authority to a Federal agency, the ''disposal agency'' as used in this part refers to GSA.

§ 102–75.10 What basic real property disposal policy governs disposal agencies?

Disposal 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 survey the real property under their custody or control to identify property that is not utilized, underutilized, or not being put to optimum use. Disposal agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

REAL PROPERTY DISPOSAL SERVICES

§ 102–75.15 What real property disposal services must agencies provide under a delegation of authority from GSA?

Disposal agencies must provide real property disposal services for real property assets under their custody and control, such as the utilization of excess property, surveys, and the disposal of surplus property, which includes public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

§ 102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

Federal agencies with independent disposal authority are encouraged to obtain utilization, disposal, and 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 they can remain focused on their core mission.

Subpart B—Utilization of Excess Real Property

§ 102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?

Landholding agencies' responsibilities concerning the utilization of excess property are to—

(a) Achieve maximum use of their real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;

(b) Increase the identification and reporting of their excess real property; and

(c) Fulfill its needs for real property, so far as practicable, by utilization of real property determined excess by other agencies, pursuant to the provision of this part, before it purchases non-Federal real property.

§ 102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?

Disposal agencies' responsibilities concerning the utilization of excess property are to—

(a) 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

(b) Resolve conflicting requests for transferring real property that the involved agencies cannot resolve.

§ 102–75.35 [Reserved]

STANDARDS

§ 102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?

Each Executive agency must identify unneeded Federal property using the following standards:

(a) Not utilized.

(b) Underutilized.

(c) Not being put to optimum use.

§ 102–75.45 What does the term "Not utilized" mean?

Not utilized means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable Executive agency, or occupied in caretaker status only.

§ 102–75.50 What does the term "Underutilized" mean?

Underutilized means an entire property or portion thereof, with or without improvements, which is used—

(a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or

(b) For current program purposes that can be satisfied with only a portion of the property.

§ 102–75.55 What does the term "Not being put to optimum use" mean?

Not being put to optimum use means an entire property or portion thereof, with or without improvements, which—

(a) Even though used for current program purposes, the nature, value, or location of the property is such that it could be utilized for a different and significantly higher and better purpose; or

(b) The costs of occupying are substantially higher than other suitable properties that could be made available through transfer, purchase, or lease with total net savings to the Government, after considering property values, costs of moving, occupancy, operational efficiency, environmental effects, regional planning, and employee morale.

GUIDELINES

§ 102–75.60 What are landholding agencies' responsibilities concerning real property surveys?

A landholding agency's responsibilities concerning real property utilization surveys are to—

(a) Survey real property under its control (i.e., property reported on its financial statements) at least annually to identify property that is not utilized, 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, the GSA Customer Guide to Real Property Disposal can 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.

§ 102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?

It is important that each Executive agency notify the disposal agency of its real property needs to determine whether the excess or surplus property of another agency is available that would meet its need and prevent the unnecessary purchase or lease of real property.

§ 102–75.70 Are there any exceptions to this notification policy?

Yes, Executive agencies are not required to notify the disposal agency when an agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics that limit the possible use of other available property. For example, Executive agencies are not required to notify disposal agencies concerning the acquisition of real property for a dam site, reservoir area, or the construction of a generating plant or a substation, since specific lands are needed, which limit the possible use of other available property. Therefore, no useful purpose would be served by notifying the disposal agency.

§ 102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?

In every case of a proposed transfer of excess real property, the most important consideration is the validity and appropriateness of the requirement upon which the proposal is based. Also, a proposed transfer must not establish a new program that has never been reflected in any previous budget submission or congressional action. Additionally, a proposed transfer must not substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

§ 102–75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?

Before requesting a transfer of excess real property, an Executive agency must—

(a) Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;

(b) Review all real property under its accountability that has been permitted or outleased and terminate the permit or lease for any property, or portion thereof, suitable for the proposed need, if termination is not prohibited by the terms of the permit or lease;

(c) Utilize property that is or can be made available under § 102–75.80(a) or (b) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;

(d) Confirm that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property that would be suitable for the intended purpose;

(e) Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and

(f) Consider the design, layout, geographic location, age, state of repair,

and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

§ 102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?

Yes, but only on a temporary basis with the condition that the property will be released for further Federal utilization or disposal as surplus property at an agreed upon time when the transfer is arranged.

§ 102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?

GSA may temporarily assign or direct the use of such excess real property to the requesting agency. See § 102–75.240.

§ 102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?

Yes, GSA can authorize the use of excess real property for an approved program. See § 102–75.240.

LAND WITHDRAWN OR RESERVED FROM THE PUBLIC DOMAIN

§ 102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?

An agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA Regional Office a Report of Excess Real Property (Standard Form 118), with appropriate Schedules A, B, and C, only when—

(a) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR part 2372 *et seq.*) and sent a copy of the notice to the appropriate GSA Regional Office;

(b) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(c) The Department of the Interior provides a report identifying whether or not any other agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

§ 102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

In such cases, the Department of the Interior must—

(a) Notify the appropriate GSA Regional Office of such a determination; and

(b) Authorize the landholding agency to identify in the Standard Form 118 any minerals in the land that the Department of the Interior determines to be unsuitable for disposition under the public land mining and mineral leasing laws.

TRANSFERS UNDER OTHER LAWS

§ 102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?

Yes, the provisions of this section shall not apply to transfers of real property authorized to be made by 40 U.S.C. 113(e) or by any special statute that directs or requires an Executive agency to transfer or convey specifically described real property in accordance with the provisions of that statute. Transfers of real property must be made only under the authority of Title 40 of the United States Code, unless the independent authority granted to such agency specifically exempts the authority from the requirements of Title 40.

REPORTING OF EXCESS REAL PROPERTY

§ 102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?

Yes, landholding agencies must prepare reports of excess real property and related personal property on—

(a) Standard Form 118, Report of Excess Real Property, and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A;

(b) Standard Form 118b, Land, Schedule B; and

(c) Standard Form 118c, Related Personal Property, Schedule C.

§ 102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

Yes, in all cases where Government-owned land is reported excess, Executive agencies must include a title report, prepared or approved by a qualified employee of the landholding agency, documenting the Government's title to the property.

TITLE REPORT

§ 102–75.125 What information must agencies include in the title report?

When completing the title report, agencies must include—

(a) The description of the property;

(b) The date title vested in the United States;

(c) All exceptions, reservations, conditions, and restrictions, relating to the title;

(d) Detailed information concerning any action, thing, or circumstance that occurred from the date the United States acquired the property to the date of the report that in any way affected or may have affected the United States' right, title, or interest in and to the real property (including copies of legal comments or opinions discussing the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect must be made a part of the report;

(e) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect must be made a part of the report;

(f) Detailed information regarding any known flood hazards or flooding of the property, and, if the property is located in a flood-plain or on wetlands, a listing of restricted uses (along with the citations) identified in Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977;

(g) The specific identification and description of fixtures and related personal property that have possible historic or artistic value;

(h) The historical significance of the property and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property listed in the National Register. If the landholding agency is aware of any effort by the public to have the property listed in the National Register, it must also include this information;

(i) A description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fire-proofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. Agencies must also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property that is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499);

(j) A statement indicating whether or not lead-based paint is present on the property. Additionally, if the property is target housing (all housing except housing for the elderly or persons with disabilities or any zero bedroom dwelling) constructed prior to 1978, provide a risk assessment and paint inspection

report that details all lead-based paint hazards; and

(k) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the U.S. Environmental Protection Agency (EPA) at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property must review the regulations issued by EPA at 40 CFR part 373 for details on the information required and must comply with these requirements. In addition, agencies reporting such property shall review and comply with the regulations for the utilization and disposal of hazardous materials and certain categories of property set forth at 41 CFR part 101–42.

§ 102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include in the title report?

If hazardous substance activity took place on the property, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. The reporting agency must also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such hazardous substance activity was taken before the date the property was reported excess. If such action was not taken, the reporting agency must advise the disposal agency when such action will be completed or how the agency expects to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the disposal. See §§ 102–75.340 and 102–75.345.

§ 102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?

If no hazardous substance activity took place, the reporting agency must include the following statement:

The (reporting agency) has determined, in accordance with regulations issued by EPA at 40 CFR part 373, that there is no evidence indicating that hazardous substance activity took place on the property during the time the property was owned by the United States.

OTHER NECESSARY INFORMATION

§ 102–75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

Executive agencies must provide—

(a) A legible, reproducible copy of all instruments in possession of the agency that affect the United States' right, title, or interest in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). If it is impracticable to transmit the abstracts of title and related title evidence, agencies must provide the name and address of the custodian of such documents in the title report referred to in § 102–75.120;

(b) Any appraisal reports indicating or providing the fair market value or the fair annual rental of the property, if requested by the disposal agency; and

(c) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by EPA under 40 CFR part 761, if requested by the disposal agency. If the property does contain any equipment subject to EPA regulation under 40 CFR part 761, the certification must include the landholding agency's assurance that each piece of equipment is now and will continue to be in compliance with the EPA regulations until disposal of the property.

EXAMINATION FOR ACCEPTABILITY

§ 102–75.145 Is GSA required to review each report of excess?

Yes, GSA must review each report of excess to ascertain whether the report was prepared according to the provisions of this part. GSA must notify the

landholding agency, in writing, whether the report is acceptable or other information is needed within 15 calendar days after receipt of the report.

§ 102–75.150 What happens when GSA determines that the report of excess is adequate?

When GSA determines that a report is adequate, GSA will accept the report and inform the landholding agency of the acceptance date. However, the landholding agency must, upon request, promptly furnish any additional information or documents relating to the property required by GSA to accomplish a transfer or a disposal.

§ 102–75.155 What happens if GSA determines that the report of excess is insufficient?

Where GSA determines that a report is insufficient, GSA will return the report and inform the landholding agency of the facts and circumstances that make the report insufficient. The landholding agency must promptly take appropriate action to submit an acceptable report to GSA. If the landholding agency is unable to submit an acceptable report, the property will no longer be considered as excess property and the disposal agency will cease activity for the disposal of the property. However, GSA may accept the report of excess on a conditional basis and identify what deficiencies in the report must be corrected in order for the report to gain full acceptance.

DESIGNATION AS PERSONAL PROPERTY

§ 102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?

Prefabricated movable structures such as Butler-type storage warehouses, Quonset huts, and house trailers (with or without undercarriages) reported to GSA along with the land on which they are located may, at GSA's discretion, be designated for disposition as personal property for off-site use or as real property for disposal with the land.

§ 102–75.165 Should related personal property be designated real or personal property for disposition purposes?

Related personal property may, at the disposal agency's discretion, be designated as personal property for disposal purposes. However, for fine artwork and sculptures, GSA's policy is that artwork specifically created for a Federal building is considered as a fixture of the building. This also applies to sculptures created for a Federal building or a public park. Disposal agencies must follow the policies and guidance for disposal of artwork and sculptures developed by the GSA Office of the Chief Architect, Center for Design Excellence and the Arts, and the Bulletin dated March 26, 1934, entitled ''Legal Title to Works Produced under the Public Works of Art Project.''

§ 102–75.170 What happens to the related personal property in a structure scheduled for demolition?

When a structure is to be demolished, any fixtures or related personal property therein may, at the disposal agency's discretion, be designated for disposition as personal property where a ready disposition can be made of these items. As indicated in § 102–75.165, particular consideration should be given to designating items having possible historical or artistic value as personal property.

TRANSFERS

§ 102–75.175 What are GSA's responsibilities regarding transfer requests?

Before property can be transferred among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia, GSA must determine that—

(a) The transfer is in the best interest of the Government;

(b) The requesting agency is the appropriate agency to hold the property; and

(c) The proposed land use will maximize use of the real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

§ 102–75.180 May landholding agencies transfer excess real property without notifying GSA?

Landholding agencies may, without notifying GSA, transfer excess real property that they use, occupy, or control under a lease, permit, license, easement, or similar instrument when—

(a) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(c) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet.

§ 102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?

In those instances, landholding agencies must transfer property following the policies in this subpart.

§ 102–75.190 What amount must the transferee agency pay for the transfer of excess real property?

The transferee agency must pay an amount equal to the property's fair market value (determined by the Administrator)—

(a) Where the transferor agency has requested the net proceeds of the transfer pursuant to 40 U.S.C. 574; or

(b) Where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841), is a mixed-ownership Government corporation, or the municipal government of the District of Columbia.

§ 102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?

As may be agreed upon by GSA and the corporation, the transferee agency must pay an amount equal to—

(a) The estimated fair market value of the property; or

(b) The corporation's book value of the property.

§ 102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?

Where the transfer is for the purpose of upgrading facilities (i.e., for the purpose of replacing other property of the transferee agency, which because of the location, nature, or condition thereof, is less efficient for use), the transferee must pay an amount equal to the difference between the fair market value of the property to be replaced and the fair market value of the property requested, as determined by the Administrator.

§ 102–75.205 Are transfers ever made without reimbursement by the transferee agency?

Transfers may be made without reimbursement by the transferee agency only if—

(a) Congress has specifically authorized the transfer without reimbursement, or

(b) The Administrator, with the approval of the Director of the Office of Management and Budget (OMB), has approved a request for an exception from the 100 percent reimbursement requirement.

§ 102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?

The request must include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12512, Federal Real Property Management, dated April 29, 1985. The transferee agency must attach the explanation to the Request for Transfer of Excess Real and Related Personal

Property (GSA Form 1334) prior to submitting the form to GSA. The unavailability of funds alone is not sufficient to justify an exception.

§ 102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?

Agency heads must endorse requests for exceptions to the 100 percent reimbursement requirement.

§ 102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?

Agencies must submit all requests for exception from the 100 percent reimbursement requirement to the appropriate GSA regional property disposal office.

§ 102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?

The Administrator must review all requests for exception from the 100 percent reimbursement requirement. If the Administrator approves the request, it is then submitted to OMB for final concurrence. If OMB approves the request, then GSA may complete the transfer.

§ 102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?

The agency requesting the property will assume responsibility for protection and maintenance costs not more than 40 days from the date of the Administrator's letter to OMB requesting concurrence for an exception to the 100 percent reimbursement requirement. If the request is denied, the requesting agency may pay the fair market value for the property or withdraw its request. If the request is withdrawn, responsibility for protection and maintenance cost will return to the landholding agency at that time.

§ 102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

Yes, disposal agencies may transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction, pursuant to the provisions of 40 U.S.C. 113(d). The amount of reimbursement for such transfer must be the same as would be required for a transfer of excess property to an Executive agency under similar circumstances.

TEMPORARY UTILIZATION

§ 102–75.240 May excess real property be temporarily assigned/reassigned?

Yes, whenever GSA determines that it is more advantageous to assign property temporarily rather than permanently, it may do so. If the space is for office, storage, or related facilities, GSA will determine the length of the assignment/reassignment. Agencies are required to reimburse the landholding agency (or GSA, if GSA has become responsible for seeking an appropriation for protection and maintenance expenses) (see § 102–75.970) for protection and maintenance expenses. GSA may also temporarily assign/reassign excess real property for uses other than storage, office or related facilities. In such cases, the agency receiving the temporary assignment may be required to pay a rental or users charge based upon the fair market value of the property, as determined by GSA. If the property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at an agreed upon time (see § 102–75.85). The requesting agency is responsible for protection and maintenance expenses.

NON-FEDERAL INTERIM USE OF EXCESS PROPERTY

§ 102–75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?

Landholding agencies, upon approval from GSA, 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 and when the interim use will

not impair the ability to dispose of the property.

Subpart C—Surplus Real Property Disposal

§ 102–75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?

The disposal agency must dispose of surplus real property—

(a) In the most economical manner consistent with the best interests of the Government; and

(b) Ordinarily for cash, consistent with the best interests of the Government.

§ 102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?

The disposal agency must determine that there is no further Federal need or requirement for the excess real property and the property is surplus to the needs of the Federal Government. After reaching this determination, the disposal agency must expeditiously make the surplus property available for acquisition by State and local governmental units and non-profit institutions (see § 102–75.350) or for sale by public advertising, negotiation, or other disposal action. The disposal agency 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. Where hazardous substance activity is identified, see §§ 102–75.340 and 102–75.345 for required information that the disposal agency must incorporate into the offer to purchase and conveyance document.

§ 102–75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?

The disposal agency may dispose of surplus real property by exchange for privately owned property for property management considerations such as boundary realignment or for providing access. The disposal agency may also dispose of surplus real property by exchange for privately owned property 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.

§ 102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

Yes, conveyance documents must identify all agreements and representations concerning restrictions and conditions affecting the property's future use, maintenance, or transfer.

APPLICABILITY OF ANTITRUST LAWS

§ 102–75.270 Must antitrust laws be considered when disposing of property?

Yes, antitrust laws must be considered in any case in which there is contemplated a disposal to any private interest of—

(a) Real and related personal property that has an estimated fair market value of $3 million or more; or

(b) Patents, processes, techniques, or inventions, irrespective of cost.

§ 102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?

The Attorney General determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws.

§ 102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?

The disposal agency must promptly provide the Attorney General with notice of any such proposed disposal and the probable terms or conditions, as required by 40 U.S.C. 559. If notice is given by any disposal agency other than GSA, a copy of the notice must also be provided simultaneously to the GSA Regional Office in which the property is located. Upon request, a disposal agency must furnish information

that the Attorney General believes to be necessary in determining whether the proposed disposition or any other disposition of surplus real property violates or would violate any of the antitrust laws.

§ 102–75.285 Can a disposal agency dispose of real property to a private interest specified in § 102–75.270 before advice is received from the Attorney General?

No, advice from the Attorney General must be received before disposing of real property.

DISPOSALS UNDER OTHER LAWS

§ 102–75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?

Except for disposals specifically authorized by special legislation, disposals of real property must be made only under the authority of Chapter 5 of Subtitle I of Title 40 of the United States Code. However, the Administrator of General Services can evaluate, on a case-by-case basis, the disposal provisions of any other law to determine consistency with the authority conferred by Title 40. The provisions of this section do not apply to disposals of real property authorized to be made by 40 U.S.C. 113 or by any special statute that directs or requires an Executive agency named in the law to transfer or convey specifically described real property in accordance with the provisions of that statute.

CREDIT DISPOSALS

§ 102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

The disposal agency—

(a) May extend credit in connection with any disposal of surplus property when it determines that credit terms are necessary to avoid reducing the salability of the property and potential obtainable price and, when below market rates are extended, confer with the Office of Management and Budget to determine if the Federal Credit Reform Act of 1990 is applicable to the transaction;

(b) Must administer and manage the credit disposal and any related security;

(c) May enforce, adjust, or settle any right of the Government with respect to extending credit in a manner and with terms that are in the best interests of the Government; and

(d) Must include provisions in the conveyance documents that obligate the purchaser, where a sale is made upon credit, to obtain the disposal agency's prior written approval before reselling or leasing the property. The purchaser's credit obligations to the United States must be fulfilled before the disposal agency may approve the resale of the property.

DESIGNATION OF DISPOSAL AGENCIES

§ 102–75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?

A landholding agency may be the disposal agency for real and related personal property when—

(a) The agency has statutory authority to dispose of real and related personal property;

(b) The agency has delegated authority from GSA to dispose of real and related personal property; or

(c) The agency is disposing of—

(1) Leases, licenses, permits, easements, and other similar real estate interests held by agencies in non-Government-owned real property;

(2) Government-owned improvements, including fixtures, structures, and other improvements of any kind as long as the underlying land is not being disposed; or

(3) Standing timber, embedded gravel, sand, stone, and underground water, without the underlying land.

§ 102–75.297 Are there any exceptions to when landholding agencies can serve as the disposal agency?

Yes, landholding agencies may not serve as the disposal agency when—

(a) Either the landholding agency or GSA determines that the Government's best interests are served by disposing of leases, licenses, permits, easements and similar real estate interests together with other property owned or

controlled by the Government that has been or will be reported to GSA, or

(b) Government-owned machinery and equipment being used by a contractor-operator will be sold to a contractor-operator.

§ 102–75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in § 102–75.296?

Yes. If requested, GSA, at its discretion, may be the disposal agency for such real property and real property interests.

§ 102–75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

Landholding agencies are and remain responsible for all rental/lease payments until the lease expires or is terminated. Landholding agencies are responsible for paying any restoration or other direct costs incurred by the Government associated with termination of a lease, and for paying any demolition and removal costs not offset by the sale of the property. (See also § 102–75.965.)

APPRAISAL

§ 102–75.300 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal transactions, except when—

(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 subpart C of this part; or

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $300,000.

§ 102–75.305 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, agencies must obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of the property available for disposal.

§ 102–75.310 Who must agencies use to appraise the real property?

Agencies must use only experienced and qualified real estate appraisers familiar with the types of property to be appraised when conducting the appraisal. When an appraisal is required for negotiation purposes, the same standard applies. However, agencies may authorize other methods of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining that data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

§ 102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?

Yes, appraisers are authorized to consider the effect of historic covenants on the fair market value, if the property is in or eligible for listing in the National Register of Historic Places.

§ 102–75.320 Does appraisal information need to be kept confidential?

Yes, appraisals, appraisal reports, appraisal analyses, and other predecisional appraisal documents are confidential and can only be used by authorized Government personnel who can substantiate the need to know this information. Appraisal information must not be divulged prior to the delivery and acceptance of the deed. Any persons engaged to collect or evaluate appraisal information must certify that—

(a) They have no direct or indirect interest in the property; and

(b) The report was prepared and submitted without bias or influence.

INSPECTION

§ 102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

Landholding agencies should provide all persons interested in acquiring available surplus property with the opportunity to make a complete inspection of the property, including any available inventory records, plans,

specifications, and engineering reports that relate to the property. These inspections are subject to any necessary national security restrictions and are subject to the disposal agency's rules. (See §§ 102–75.335 and 102–75.985.)

SUBMISSION OF OFFERS TO PURCHASE OR LEASE

§ 102–75.330 What form must all offers to purchase or lease be in?

All offers to purchase or lease must be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency. In addition to the financial terms upon which the offer is predicated, the offer must set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and must contain such other information as the disposal agency may request.

PROVISIONS RELATING TO ASBESTOS

§ 102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see § 102–75.125), the disposal agency must incorporate this information (less any cost or time estimates to remove the asbestos-containing materials) into any offer to purchase and conveyance document and include the following wording:

Notice of the Presence of Asbestos—Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) that may be required in order to carry out any such inspection(s). Bidders (offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability, or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property that is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that, in its use and occupancy of the property, it will comply with all Federal, State, and local laws relating to asbestos.

PROVISIONS RELATING TO HAZARDOUS SUBSTANCE ACTIVITY

§ 102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see §§ 102–75.125 and 102–75.130), the disposal agency must incorporate this information into any offer to purchase and conveyance document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in the GSA Customer Guide to Real Property Disposal):

(a) Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency.

(b) A statement, certified by a responsible landholding agency official in the Report of Excess Real Property, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of CERCLA, or the Early Transfer Authority, or a conveyance to a ''potentially responsible party'', as defined by CERCLA (see 102–75.345)).

(c) A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance.

(d) A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

§ 102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

In the case where the purchaser or grantee is a potentially responsible party (PRP) with respect to hazardous substance activity on the property under consideration, the United States is no longer under a general obligation to certify that the property has been successfully remediated, or to commit to return to the property to address contamination that is discovered in the future. Therefore, the statements of responsibility and commitments on behalf of the United States referenced in § 102–75.340 should not be used. Instead, language should be included in the offer to purchase and conveyance document that is consistent with any agreement that has been reached between the landholding agency and the PRP with regard to prior hazardous substance activity.

PUBLIC BENEFIT CONVEYANCES

§ 102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?

Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain nonprofit institutions or organizations 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 for these conveyances are found in this subpart.

§ 102–75.351 May the disposal agency waive screening for public benefit conveyances?

All properties, consistent with the highest and best use analysis, will normally be screened for public benefit uses. However, the disposal agency may waive public benefit screening, with the exception of the mandatory McKinney-Vento homeless screening,

for specific property disposal considerations, e.g., when a property has been reported excess for exchange purposes.

§ 102–75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?

Executive agencies must include in the offer to purchase and conveyance documents the non-discrimination clause in § 102–75.360 for public benefit conveyances.

§ 102–75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and in the conveyance document?

The wording of the non-discrimination clause must be as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

POWER TRANSMISSION LINES

§ 102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?

Yes, disposal agencies must notify State entities and Government agencies of the availability of a surplus power transmission line and right-of-way.

§ 102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Yes, section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)) allows any State or political subdivision, or any State or Government agency or instrumentality to certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needed to meet the requirements of a public or cooperative power project.

§ 102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Generally, once a State or political subdivision certifies that it needs a surplus power transmission line and the right-of-way, the disposal agency may sell the property to the state, or political subdivision thereof, at the fair market value. However, if a sale of a surplus transmission line cannot be accomplished because of the price to be charged, or other reasons, and the certification by the State or political subdivision is not withdrawn, the disposal agency must report the facts involved to the Administrator of General Services, to determine what further action will or should be taken to dispose of the property.

§ 102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

Yes, power transmission lines and rights-of-way not disposed of by sale for fair market value may be disposed of following other applicable provisions of this part, including, if appropriate, reclassification by the disposal agency.

PROPERTY FOR PUBLIC AIRPORTS

§ 102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?

Yes, the disposal agency must notify eligible public agencies that property currently used as or suitable for use as a public airport under the Surplus Property Act of 1944, as amended, has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) must be transmitted with the copy of the surplus property notice sent to the appropriate regional office of the Federal Aviation Administration (FAA). The FAA must furnish an application form and instructions for the preparation of an application to eligible public agencies upon request.

§ 102–75.390 What does the term "surplus airport property" mean?

For the purposes of this part, surplus airport property is any surplus real property including improvements and personal property included as a part of the operating unit that the Administrator of FAA deems is—

(a) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101); or

(b) Reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from non-aviation businesses at a public airport. Approval for non-aviation revenue-producing areas may only be given for such areas as are anticipated to generate net proceeds that do not exceed expected deficits for operation of the aviation area applied for at the airport.

§ 102–75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?

Yes, section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. § 47151) authorizes the disposal agency to convey or dispose of surplus airport property to a State, political subdivision, municipality, or tax-supported institution for use as a public airport.

§ 102–75.400 Is industrial property located on an airport also considered to be "airport property"?

No, if the Administrator of General Services determines that a property's highest and best use is industrial, then the property must be classified as such for disposal without regard to the public benefit conveyance provisions of this subpart.

§ 102–75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?

As soon as possible after receiving the copy of the surplus notice, the FAA must inform the disposal agency of its determination. Then, the FAA must provide assistance to any eligible public agency known to have a need for the property for a public airport, so that the public agency may develop a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?

After an eligible public agency submits a plan of use and application, the disposal agency must transmit two copies of the plan and two copies of the application to the appropriate FAA regional office. The FAA must promptly submit a recommendation to the disposal agency for disposal of the property for a public airport or must inform the disposal agency that no such recommendation will be submitted.

§ 102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?

The head of the disposal agency, or his or her designee, may convey property approved by the FAA for use as a public airport to the eligible public

agency, subject to the provisions of the Surplus Property Act of 1944, as amended.

§ 102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?

Any airport property that the FAA does not recommend for disposal as a public airport must be disposed of in accordance with other applicable provisions of this part. However, the disposal agency must first notify the landholding agency of its inability to dispose of the property for use as a public airport. In addition, the disposal agency must allow the landholding agency 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

§ 102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?

The Administrator of the FAA has the sole responsibility for enforcing compliance with the terms and conditions of disposals to be used as a public airport. The FAA is also responsible for reforming, correcting, or amending any disposal instruments; granting releases; and any action necessary for recapturing the property, using the provisions of 49 U.S.C. 47101 *et seq*.

§ 102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?

If property that was conveyed for use as a public airport is revested in the United States for noncompliance with the terms of the disposal, or other cause, the Administrator of the FAA must be accountable for the property and must report the property to GSA as excess property following the provisions of this part.

§ 102–75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970), apply to the transfer of airports to State and local agencies?

No, the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 47101–47131) (Airport Act of 1970), does not apply to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151–47153). Only property that the landholding agency determines cannot be reported excess to GSA for disposal under Title 40, but nevertheless may be made available for use by a State or local public body as a public airport without being inconsistent with the Federal program of the landholding agency, may be conveyed under the Airport Act of 1970. In the latter instance, the Airport Act of 1970 may be used to transfer non-excess land for airport development purposes provided it does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

PROPERTY FOR USE AS HISTORIC MONUMENTS

§ 102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?

Disposal agencies must notify State and area wide clearinghouses and eligible public agencies that property that may be conveyed for use as a historic monument has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118) with accompanying schedules must be transmitted with the copy of each notice that is sent to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI).

§ 102–75.445 Who can convey surplus real and related personal property for historic monument use?

A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public, provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.

§ 102–75.450 What type of property is suitable or desirable for use as a historic monument?

Only property conforming with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments shall be determined to be suitable or desirable for use as a historic monument.

§ 102–75.455 May historic monuments be used for revenue-producing activities?

The disposal agency may authorize the use of historic monuments conveyed under 40 U.S.C. 550(h) or the Surplus Property Act of 1944, as amended, for revenue-producing activities, if the Secretary of the Interior—

(a) Determines that the activities, described in the applicant's proposed program of use, are compatible with the use of the property for historic monument purposes;

(b) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(c) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. DOI must not approve the plan unless it provides that all income in excess of costs of repair, rehabilitation, restoration, maintenance, and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities, is used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(d) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

§ 102–75.460 What information must disposal agencies furnish eligible public agencies?

Upon request, the disposal agency must furnish eligible public agencies with adequate preliminary property information and, with the landholding agency's cooperation, provide assistance to enable public agencies to obtain adequate property information.

§ 102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?

Eligible public agencies must submit the original and two copies of the completed application to acquire real property for use as a historic monument to the appropriate regional or field offices of NPS, which will forward one copy of the application to the appropriate regional office of the disposal agency.

§ 102–75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?

NPS must promptly—

(a) Submit the Secretary of the Interior's determination to the disposal agency; or

(b) Inform the disposal agency that no such recommendation will be submitted.

§ 102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?

The head of the disposal agency or his or her designee may convey to an eligible public agency surplus property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of 40 U.S.C. 550(h).

§ 102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?

The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of such a disposal. DOI is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property using the provisions of 40 U.S.C. 550(b). The actions

are subject to the approval of the head of the disposal agency.

§ 102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?

In such a case, DOI must notify the appropriate GSA Public Buildings Service (PBS) Regional Office immediately by letter when title to the historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, including any improvements constructed since the original conveyance to the grantee. After receiving a statement from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Report of Excess Real Property, Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance of the property until the title reverts to the Federal Government, including the period of the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

§ 102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?

The disposal agency must notify eligible public agencies that surplus property is available for educational and/or public health purposes. The notice must require that any plans for an educational or public health use, resulting from the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with the Department of Education (ED) or the Department of Health and Human Services (HHS), as appropriate. The notice must also let eligible public agencies know where to obtain the applications, instructions for preparing them, and where to submit the application. The requirement for educational or public health use of the property by an eligible public agency is contingent upon the disposal agency's approval, under § 102–75.515, of a recommendation for assignment of Federal surplus real property received from ED or HHS. Further, any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in § 102–75.535.

§ 102–75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?

Yes, ED or HHS may notify eligible non-profit institutions that such property has been determined to be surplus. Notices to eligible non-profit institutions must require eligible non-profit institutions to coordinate any request for educational or public health use of the property with the appropriate public agency responsible for developing and submitting a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?

The head of the disposal agency or his designee may—

(a) Assign to the Secretary of ED for disposal under 40 U.S.C. 550(c) surplus real property, including buildings, fixtures, and equipment, as recommended by the Secretary as being needed for school, classroom, or other educational use; or

(b) Assign to the Secretary of HHS for disposal under 40 U.S.C. 550 (d) such surplus real property, including buildings, fixtures, and equipment situated

thereon, as recommended by the Secretary as being needed for use in the protection of public health, including research.

§ 102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?

Yes, eligible non-profit organizations will only receive surplus real property for an educational or public health use if the disposal agency approves or grants the assignment request from either ED or HHS. The disposal agency will also consider other uses for available surplus real property, taking into account the highest and best use determination. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in this part.

§ 102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?

ED and HHS must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, ED or HHS has 30 calendar days to review and approve an application and request assignment of the property, or inform the disposal agency that no assignment request will be forthcoming.

§ 102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?

When an eligible public agency submits a plan of use for property for an educational or public health requirement, the disposal agency must transmit two copies of the plan to the regional office of ED or HHS, as appropriate. The ED or HHS must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, as appropriate, or must inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it must assign the property by letter or other document to the Secretary of ED or HHS, as appropriate. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the appropriate Department.

§ 102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?

Any assignment recommendation that ED or HHS submits to the disposal agency must provide complete information concerning the educational or public health use, including—

(a) Identification of the property;

(b) The name of the applicant and the size and nature of its program;

(c) The specific use planned;

(d) The intended public benefit allowance;

(e) The estimate of the value upon which such proposed allowance is based; and

(f) An explanation if the acreage or value of the property exceeds the standards established by the Secretary.

§ 102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?

Landholding agencies must cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating to the property.

§ 102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?

In the absence of an approved application from ED or HHS to convey the property for educational or public health purposes, which must be received within the 30 calendar day time limit, the disposal agency will proceed with other disposal actions.

§ 102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, ED or HHS must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 days of receiving the Notice of Proposed Transfer, ED or HHS may prepare the transfer documents and proceed with the transfer. ED or HHS must take all necessary actions to accomplish the transfer within 15–calendar days beginning when the disposal agency approves the transfer. ED or HHS must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(c) or (d) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?

ED or HHS, as appropriate, is responsible for enforcing compliance with the terms and conditions of transfer. ED or HHS is also responsible for reforming, correcting, or amending any transfer instruments; granting releases; and for taking any necessary actions for recapturing the property using or following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. ED or HHS must notify the disposal agency of its intent to take any actions to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

§ 102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, ED or HHS must, prior to repossession or reversion of title, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from ED or HHS that the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with ED or HHS, determines that the property should be revested, ED or HHS must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

PROPERTY FOR PROVIDING SELF-HELP HOUSING OR HOUSING ASSISTANCE

§ 102–75.550 What does "self-help housing or housing assistance" mean?

Property for self-help housing or housing assistance (which is separate from the program under Title V of the McKinney-Vento Homeless Assistance Act covered in subpart H of this part) is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of housing, under terms that require that—

(a) Any individual or family receiving housing or housing assistance must contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(b) Dwellings constructed, rehabilitated, or refurbished must be quality dwellings that comply with local building and safety codes and standards and must be available at prices below prevailing market prices.

§ 102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?

The head of the disposal agency, or designee, may assign, at his/her discretion, surplus real property, including buildings, fixtures, and equipment to the Secretary of the Department of Housing and Urban Development (HUD).

§ 102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?

The disposal agency must notify eligible public agencies that surplus property is available. The notice must require that any plans for self-help housing or housing assistance use resulting from the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD. Eligible public agencies may obtain an application form and instructions for preparing and submitting the application from HUD.

§ 102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or non-profit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?

Yes, the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization is contingent upon the disposal agency's approval under § 102–75.585 of HUD's assignment recommendation/request. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(f) and referenced in § 102–75.605.

§ 102–75.570 What happens if the disposal agency does not approve the assignment recommendation?

If the recommendation is not approved, the disposal agency must also notify the Secretary of HUD and then may proceed with other disposal action.

§ 102–75.575 Who notifies non-profit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?

HUD notifies eligible non-profit organizations, following guidance in the GSA Customer Guide to Real Property Disposal. Such notices must require eligible nonprofit organizations to—

(a) Coordinate any requirement for self-help housing or housing assistance use of the property with the appropriate public agency; and

(b) Declare to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?

HUD must notify the disposal agency within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, HUD has 30 calendar days to review and approve an application and request assignment or inform the disposal agency that no assignment request is forthcoming.

§ 102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?

When an eligible public agency submits a plan of use for property for a self-help housing or housing assistance requirement, the disposal agency must transmit two copies of the plan to the appropriate HUD regional office. HUD must submit to the disposal agency, within 30 calendar days after the date

the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or must inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to HUD. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it must assign the property by letter or other document to the Secretary of HUD. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify the Secretary of HUD.

§ 102–75.590 What does the assignment recommendation contain?

Any assignment recommendation that HUD submits to the disposal agency must set forth complete information concerning the self-help housing or housing assistance use, including—

(a) Identification of the property;

(b) Name of the applicant and the size and nature of its program;

(c) Specific use planned;

(d) Intended public benefit allowance;

(e) Estimate of the value upon which such proposed allowance is based; and

(f) An explanation, if the acreage or value of the property exceeds the standards established by the Secretary.

§ 102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?

Landholding agencies must cooperate to the fullest extent possible with HUD representatives in their inspection of such property and in furnishing information relating to such property.

§ 102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?

In the absence of an approved application from HUD for self-help housing or housing assistance use, which must be received within the 30–calendar day time limit specified therein, the disposal agency must proceed with other disposal action.

§ 102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, HUD must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days of receiving the Notice of Proposed Transfer, HUD may prepare the transfer documents and proceed with the transfer. HUD must take all necessary actions to accomplish the transfer within 15 calendar days beginning when the disposal agency approves the transfer. HUD must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(f) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?

HUD is responsible for enforcing compliance with the terms and conditions of transfer. HUD is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for taking any necessary actions for recapturing the property using the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. HUD must notify the head of the disposal agency of its intent to take action to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

§ 102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?

HUD maintains responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Property transferred to an entity other

than a public body and used for any purpose other than that for which it was sold or leased within a 30-year period must revert to the United States. If the property was leased, then the lease terminates. The appropriate Secretary (HUD or Department of Agriculture) and the Administrator of GSA can approve the new use of the property after the first 20 years of the original 30-year period has expired.

§ 102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) must, prior to repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from HUD (or USDA) that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with HUD (or USDA), determines that the property should be revested, HUD (or USDA) must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

PROPERTY FOR USE AS PUBLIC PARK OR RECREATION AREAS

§ 102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?

The head of the disposal agency or his or her designee is authorized to assign to the Secretary of the Interior for disposal under 40 U.S.C. 550(e), surplus real property, including buildings, fixtures, and equipment as recommended by the Secretary as being needed for use as a public park or recreation area for conveyance to a State, political subdivision, instrumentalities, or municipality.

§ 102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?

The disposal agency must notify established State, regional, or metropolitan clearinghouses and eligible public agencies that surplus property is available for use as a public park or recreation area. The disposal agency must transmit the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) with the copy of each notice sent to a regional or field office of the National Park Service (NPS) of the Department of the Interior (DOI).

§ 102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?

Upon request, DOI must furnish eligible public agencies with an application form to acquire property for permanent use as a public park or recreation area and preparation instructions for the application.

§ 102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?

DOI must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days from the date of the surplus notice.

§ 102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?

Landholding agencies must cooperate to the fullest extent possible with DOI representatives in their inspection of the property and in furnishing information relating to the property.

§ 102–75.650 When must DOI request assignment of the property?

Within 30 calendar days after the expiration of the 30–calendar day period specified in § 102–75.640, DOI must submit to the disposal agency an assignment recommendation along with a copy of the application or inform the disposal agency that a recommendation will not be made for assignment of the property.

§ 102–75.655 What does the assignment recommendation contain?

Any recommendation submitted by DOI must provide complete information concerning the plans for use of the property as a public park or recreation area, including—

(a) Identification of the property;

(b) The name of the applicant;

(c) The specific use planned; and

(d) The intended public benefit allowance.

§ 102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?

If DOI does not approve any applications or does not submit an assignment recommendation to convey the property for public park or recreation purposes, the disposal agency must proceed with other disposal action.

§ 102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOI, it must assign the property by letter or other document to the Secretary of the Interior. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the Secretary.

§ 102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, the Secretary of the Interior must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days, the Secretary may proceed with the transfer. DOI must take all necessary actions to accomplish the transfer within 15 calendar days after the expiration of the 30–calendar day period provided for the disposal agency to consider the notice. DOI may place the applicant in possession of the property as soon as practicable to minimize the Government's expense of protection and maintenance of the property. As of the date the applicant takes possession of the property, or the date it is conveyed, whichever occurs first, the applicant must assume responsibility for care and handling and all risks of loss or damage to the property, and has all obligations and liabilities of ownership. DOI must furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under 40 U.S.C. 550(e) and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?

Where appropriate, the disposal agency may make the assignment subject to DOI requiring the grantee or recipient to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer, such as for surveys, fencing, security of the remaining property, or otherwise.

§ 102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?

The deed of conveyance of any surplus real property transferred for public park and recreation purposes under 40 U.S.C. 550(e) must require that the property be used and maintained for the purpose for which it was conveyed in perpetuity. In the event that the property ceases to be used or maintained for that purpose, all or any portion of such property will in its existing condition, at the option of the United States, revert to the United States. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions determined by the Secretary of the Interior to be necessary to safeguard the interests of the United States.

§ 102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?

The Secretary of the Interior is responsible for enforcing compliance with the terms and conditions of transfer. The Secretary of the Interior is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for recapturing any property following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. DOI must notify the head of the disposal agency of its intent to take or recapture the property. The notice must identify the property affected and describe in detail the proposed action, including the reasons for the proposed action.

§ 102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

DOI must notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, using the Report of Excess Real Property (Standard Form 118) and the appropriate schedules. After receiving notice from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

PROPERTY FOR DISPLACED PERSONS

§ 102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?

Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4638 (the Relocation Act), authorizes the disposal agency to transfer surplus real property to a State agency to provide replacement housing under title II of the Relocation Act for persons who are or will be displaced by Federal or Federally assisted projects.

§ 102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?

After receiving the surplus notice, any Federal agency needing property for replacement housing for displaced

persons may solicit applications from eligible State agencies.

§ 102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?

Federal agencies must notify the disposal agency within 30 calendar days after the date of the surplus notice, if an eligible State agency is interested in acquiring the property under section 218 of the Relocation Act.

§ 102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?

Both landholding and disposal agencies must cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of the property and in furnishing information relating to the property.

§ 102–75.715 When can a Federal agency request transfer of the property to the selected State agency?

Federal agencies must advise the disposal agency and request transfer of the property to the selected State agency within 30 calendar days after the expiration of the 30–calendar day period specified in § 102–75.705.

§ 102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?

Any request submitted by a Federal agency must be in the form of a letter addressed to the appropriate GSA Public Buildings Service (PBS) regional property disposal office.

§ 102–75.725 What does the transfer request contain?

Any transfer request must include—

(a) Identification of the property by name, location, and control number;

(b) The name and address of the specific State agency and a copy of the State agency's application or proposal;

(c) A certification by the appropriate Federal agency official that the property is required to house displaced persons authorized by section 218; that all other options authorized under title II of the Relocation Act have been explored and replacement housing cannot be found or made available through those channels; and that the Federal or Federally assisted project cannot be accomplished unless the property is made available for replacement housing;

(d) Any special terms and conditions that the Federal agency deems necessary to include in conveyance instruments to ensure that the property is used for the intended purpose;

(e) The name and proposed location of the Federal or Federally assisted project that is creating the requirement;

(f) Purpose of the project;

(g) Citation of enabling legislation or authorization for the project, when appropriate;

(h) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Relocation Act; and

(i) Details of the arrangements that have been made to construct replacement housing on the surplus property and to ensure that displaced persons will be provided housing in the development.

§ 102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?

If the disposal agency does not receive a request for assignment or transfer of the property under § 102–75.715, then the disposal agency must proceed with other appropriate disposal actions.

§ 102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?

If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it must transfer the property to the designated State agency on such terms and conditions as will protect the United States' interests, including the payment or the

agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency must be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value. Disposal of the property at less than fair market value must also be approved by the disposal agency.

§ 102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?

Yes, the State agency is required to bear the costs of any out-of-pocket expenses necessary to accomplish the transfer, such as costs of surveys, fencing, or security of the remaining property.

§ 102–75.745 What happens if the property transfer request is not approved by the disposal agency?

If the request is not approved, the disposal agency must notify the Federal agency requesting the transfer. The disposal agency must furnish a copy of the notice of disapproval to the landholding agency.

PROPERTY FOR CORRECTIONAL FACILITY, LAW ENFORCEMENT, OR EMERGENCY MANAGEMENT RESPONSE PURPOSES

§ 102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?

Under 40 U.S.C. 553, the head of the disposal agency or designee may, in his or her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named in the section; or to any political subdivision or instrumentality, surplus real and related personal property for—

(a) Correctional facility purposes, if the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(b) Law enforcement purposes, if the Attorney General has determined that the property is required for such purposes; or

(c) Emergency management response purposes, including fire and rescue services, if the Director of the Federal Emergency Management Agency (FEMA) has determined that the property is required for such purposes.

§ 102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?

The disposal agency must provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and FEMA that surplus property is available. The disposal agency's notice or notification must include a copy of the landholding agency's Report of Excess Real Property (Standard Form 118), with accompanying schedules.

§ 102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?

OJP or FEMA must send notices of availability to the appropriate State and local public agencies. The notices must state that OJP or FEMA, as appropriate, must coordinate and approve any planning involved in developing a comprehensive and coordinated plan of use and procurement for the property for correctional facility, law enforcement, or emergency management response use. The notice must also state that public agencies may obtain application forms and preparation instructions from OJP or FEMA.

§ 102–75.765 What does the term "law enforcement" mean?

The OJP defines ''law enforcement'' as ''any activity involving the control

or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training.''

§ 102–75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?

Yes, the disposal agency must approve a determination, under § 102–75.795, by DOJ that identifies surplus property required for correctional facility use or for law enforcement use before an eligible public agency can obtain such property for correctional facility or law enforcement use.

§ 102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?

Yes, the disposal agency must approve a determination, under § 102–75.795, by FEMA that identifies surplus property required for emergency management response use before an eligible public agency can obtain such property for emergency management response use.

§ 102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?

OJP or FEMA must notify the disposal agency within 30 calendar days after the date of the surplus notice, if there is an eligible applicant interested in acquiring the property. After that 30–calendar day period expires, OJP or FEMA then has another 30 days to review and approve an appropriate program and notify the disposal agency of the need for the property. If no application is approved, then OJP or FEMA must notify the disposal agency that there is no requirement for the property within the 30–calendar day period allotted for review and approval.

§ 102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?

Any determination that DOJ or FEMA submits to the disposal agency must provide complete information concerning the correctional facility, law enforcement, or emergency management response use, including—

(a) Identification of the property;

(b) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(c) A copy of the approved application that defines the proposed plan of use; and

(d) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

§ 102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?

Both landholding and disposal agencies must cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating to the property.

§ 102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?

If, after considering other uses for the property, the disposal agency approves the assignment request by DOJ or FEMA, the disposal agency must convey the property to the appropriate grantee. The disposal agency must proceed with other disposal action if it does not approve the assignment request, if DOJ or FEMA does not submit an assignment request, or if the disposal agency does not receive the determination within the 30 calendar days specified in § 102–75.780. The disposal agency must notify OJP or FEMA 15 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or

emergency management response purposes and must furnish to OJP or FEMA a copy of the conveyance documents.

§ 102–75.800 What information must be included in the deed of conveyance?

The deed of conveyance of any surplus real property transferred under the provisions of 40 U.S.C. 553 must provide that all property be used and maintained for the purpose for which it was conveyed in perpetuity. If the property ceases to be used or maintained for that purpose, all or any portion of the property must, at the option of the United States, revert to the United States in its existing condition. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions the Administrator of General Services determines to be necessary to safeguard the United States' interests.

§ 102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?

The Administrator of General Services is responsible for enforcing compliance with the terms and conditions of disposals of property to be used for correctional facility, law enforcement, or emergency management response purposes. GSA is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property following the provisions of 40 U.S.C. 553(e).

§ 102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?

Upon discovery of any information indicating a change in use, OJP or FEMA must—

(a) Notify GSA; and

(b) Upon request, make a redetermination of continued appropriateness of the use of a transferred property.

§ 102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

OJP or FEMA must, prior to the repossession, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved. OJP or FEMA must use the Report of Excess Real Property (Standard Form 118), and the appropriate schedules for this purpose. After receiving a statement from OJP or FEMA that the title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with OJP or FEMA, determines that the property should be revested, OJP or FEMA must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

PROPERTY FOR PORT FACILITY USE

§ 102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?

Under 40 U.S.C. 554, the Administrator of General Services, the Secretary of the Department of Defense (in the case of property located at a military installation closed or realigned pursuant to a base closure law), or their designee, may assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to governmental bodies, any political subdivision, municipality, or instrumentality, surplus real and related personal property, including buildings, fixtures, and equipment situated on the property, that DOT recommends as

being needed for the development or operation of a port facility.

§ 102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?

The disposal agency must notify established State, regional or metropolitan clearinghouses and eligible public agencies that surplus real property is available for the development or operation of a port facility. The disposal agency must transmit a copy of the notice to DOT and a copy of the landholding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

§ 102–75.830 What does the surplus notice contain?

Surplus notices to eligible public agencies must state—

(a) That public agencies must coordinate any planning involved in the development of the comprehensive and coordinated plan of use and procurement of property, with DOT, the Secretary of Labor, and the Secretary of Commerce;

(b) That any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for the application and instructions;

(c) That the disposal agency must approve a recommendation from DOT before it can assign the property to DOT (see § 102–75.905); and

(d) That any subsequent conveyance is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 554 and referenced in § 102–75.865.

§ 102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?

DOT must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30–calendar day period expires, DOT then has another 30 calendar days to review and approve applications and notify the disposal agency of the need for the property. If no application is approved, then DOT must notify the disposal agency that there is no requirement for the property within the same 30–calendar day period allotted for review and approval.

§ 102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?

Whenever an eligible public agency has submitted a plan of use for a port facility requirement, the disposal agency must transmit two copies of the plan to DOT. DOT must either submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to DOT.

§ 102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?

Any assignment recommendation that DOT submits to the disposal agency must provide complete information concerning the contemplated port facility use, including—

(a) An identification of the property;

(b) An identification of the applicant;

(c) A copy of the approved application, which defines the proposed plan of use of the property;

(d) A statement that DOT's determination (that the property is located in an area of serious economic disruption) was made in consultation with the Secretary of Labor;

(e) A statement that DOT approved the economic development plan, associated with the plan of use of the property, in consultation with the Secretary of Commerce; and

(f) A copy of the explanatory statement, required under 40 U.S.C. 554(c)(2)(C).

§ 102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?

Landholding agencies must cooperate to the fullest extent possible with DOT representatives and the Secretary of

Commerce in their inspection of such property, and with the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating to such property.

§ 102–75.855 What happens if DOT does not submit an assignment recommendation?

If DOT does not submit an assignment recommendation or if it is not received within 30 calendar days, the disposal agency must proceed with other disposal action.

§ 102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, the disposal agency must assign the property by letter or other document to DOT. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify DOT. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency.

§ 102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?

After receiving the assignment letter from the disposal agency, DOT must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days after the date of the assignment letter. If the disposal agency approves the proposed transfer within 30 calendar days of the receipt of the Notice of Proposed Transfer, DOT may prepare the conveyance documents and proceed with the conveyance. DOT must take all necessary actions to accomplish the conveyance within 15 calendar days after the expiration of the 30–calendar day period provided for the disposal agency to consider the notice. DOT must furnish the disposal agency two conformed copies of the instruments conveying property and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

§ 102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?

DOT is responsible for enforcing compliance with the terms and conditions of conveyance, including reforming, correcting, or amending any instrument of conveyance; granting releases; and taking any necessary actions to recapture the property following the provisions of 40 U.S.C. 554(f). Any of these actions are subject to the approval of the head of the disposal agency. DOT must notify the head of the disposal agency of its intent to take any proposed action, identify the property affected, and describe in detail the proposed action, including the reasons for the proposed action.

§ 102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?

In each case of a repossession by the United States, DOT must, at or prior to reversion of title, provide the appropriate GSA regional property disposal office, with a Report of Excess Real Property (Standard Form 118) and accompanying schedules. After receiving a statement from DOT that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOT, determines that the property should be revested, DOT must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

NEGOTIATED SALES

§ 102–75.880 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;

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

(d) The disposals will be to States, the Commonwealth of Puerto Rico, possessions, political subdivisions, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

(e) Negotiation is otherwise authorized by Chapter 5 of Subtitle I of Title 40 of the United States Code or other law, such as disposals of power transmission lines for public or cooperative power projects.

§ 102–75.885 What are the disposal agency's responsibilities concerning negotiated sales?

The disposal agency 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 if the fair market value of the property exceeds $100,000, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 545(e), to the appropriate committees of the Congress in advance of such disposal.

§ 102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?

Disposal agencies must include in the offer to purchase and conveyance documents an excess profits clause, which usually runs for 3 years, to eliminate the potential for windfall profits to public agencies. 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.

§ 102–75.895 What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?

The wording of the excess profits clause should generally be as follows:

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property.

(2) The direct costs actually incurred and paid for improvements that serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements.

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section.

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) To verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and

will contain such of the following items of information as are applicable at the time of submission:

(1) A statement indicating whether or not a resale has been made.

(2) A description of each portion of the property that has been resold.

(3) The sale price of each such resold portion.

(4) The identity of each purchaser.

(5) The proposed land use.

(6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions that it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

§ 102–75.900 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.

EXPLANATORY STATEMENTS FOR NEGOTIATED SALES

§ 102–75.905 When must the disposal agency prepare an explanatory statement?

The disposal agency must prepare an explanatory statement of the circumstances of each of the following proposed disposals by negotiation:

(a) Any real property that has an estimated fair market value in excess of $100,000, except that any real property disposed of by lease or exchange is subject only to paragraphs (b) through (d) of this section.

(b) Any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of $100,000 for any of such years.

(c) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of $100,000.

(d) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property disposed in which any part of the consideration is real property.

§ 102–75.910 Are there any exceptions to this policy of preparing explanatory statements?

Yes, the disposal agency is not required to prepare an explanatory statement for property authorized to be disposed of without advertising by any provision of law other than 40 U.S.C. 545.

§ 102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?

Yes, disposal agencies must retain a copy of the explanatory statement in their files.

§ 102–75.920 Where is the explanatory statement sent?

Disposal agencies must submit each explanatory statement to the Administrator of General Services for review and transmittal by letter from the Administrator of General Services to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and any other appropriate committees of the Senate and House of Representatives. Disposal agencies must include in the submission to the Administrator of General Services any supporting data that may be relevant and necessary for evaluating the proposed action.

§ 102–75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?

Yes, GSA must furnish copies of its transmittal letters to the committees of the Congress (see § 102–75.920) to the disposal agency.

§ 102–75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

If there is no objection, the disposal agency may consummate the sale on or

after 35 days from the date the Administrator of General Services transmitted the explanatory statement to the committees. If there is an objection, the disposal agency must resolve objections with the appropriate Congressional committee or subcommittee before consummating the sale.

PUBLIC SALES

§ 102–75.935 What are disposal agencies' responsibilities concerning public sales?

Disposal 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.

DISPOSING OF EASEMENTS

§ 102–75.936 When can an agency dispose of an easement?

When the use, occupancy or control of an easement is no longer needed, agencies may release the easement to the owner of the land subject to the easement (servient estate).

§ 102–75.937 Can an easement be released or disposed of at no cost?

Yes. However, agencies must consider the Government's cost of acquiring the easement and other factors when determining if the easement will be disposed of with or without monetary or other consideration. If the easement was acquired at substantial consideration, agencies must—

(a) Determine the easement's fair market value (estimate the fair market value of the fee land without the easement and with the easement then compute the difference or compute the damage the easement caused to the fee land); and

(b) Negotiate the highest obtainable price with the owner of the servient estate to release the easement.

§ 102–75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?

Yes. If the easement is no longer needed in connection with the dominant estate, it may be disposed of separately to the owner of the servient estate. However, if the dominant estate is also surplus, the easement should be disposed of with the dominant estate.

GRANTING EASEMENTS

§ 102–75.939 When can agencies grant easements?

Agencies may grant easements in, on, or over Government-owned real property upon determining that the easement will not adversely impact the Government's interests.

§ 102–75.940 Can agencies grant easements at no cost?

Yes. Easements may be granted with or without monetary or other consideration, including any interest in real property.

§ 102–75.941 Does an agency retain responsibility for the easement?

Agencies may relinquish legislative jurisdiction as deemed necessary and desirable to the State where the real property containing the easement is located.

§ 102–75.942 What must agencies consider when granting easements?

Agencies must—

(a) Determine the easement's fair market value; and

(b) Determine the remaining property's reduced or enhanced value because of the easement.

§ 102–75.943 What happens if granting an easement will reduce the value of the property?

If the easement will reduce the property's value, agencies must grant the easement for the amount by which the property's fair market value is decreased unless the agency determines that the Government's best interests are served by granting the easement at either reduced or without monetary or other consideration.

NON-FEDERAL INTERIM USE OF SURPLUS PROPERTY

§ 102–75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?

Yes, landholding agencies who possess independent authority to outlease property may allow organizations to use surplus real property awaiting disposal using either a lease or permit, only when—

(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;

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property; and

(c) The agency executing the agreement is responsible for the servicing of such property.

Subpart D—Management of Excess and Surplus Real Property

§ 102–75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?

GSA's policy is to—

(a) Manage excess and surplus real property, including related personal property, by providing only those minimum services necessary to preserve the Government's interest and realizable value of the property considered;

(b) Place excess and surplus real property in productive use through interim utilization, provided, that such temporary use and occupancy do not interfere with, delay, or impede its transfer to a Federal agency or disposal; and

(c) Render safe or destroy aspects of excess and surplus real property that are dangerous to the public health or safety.

TAXES AND OTHER OBLIGATIONS

§ 102–75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?

Except as otherwise provided in § 102-75.230, the landholding agency is still responsible for any and all operational costs and expenses or other property-related obligations pending transfer or disposal of the property.

DECONTAMINATION

§ 102–75.955 Who is responsible for decontaminating excess and surplus real property?

The landholding agency is responsible for all expenses to the Government and for the supervision of the decontamination of excess and surplus real property that has been contaminated with hazardous materials of any sort. Extreme care must be exercised in the decontamination, management, and disposal of contaminated property in order to prevent such properties from becoming a hazard to the general public. The landholding agency must inform the disposal agency of any and all hazards involved relative to such property to protect the general public from hazards and to limit the Government's liability resulting from disposal or mishandling of hazardous materials.

IMPROVEMENTS OR ALTERATIONS

§ 102–75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?

Yes, landholding agencies may make improvements or alterations that involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in excess or surplus structures, utilities, installations, and land improvements, in those cases where disposal cannot be accomplished without such improvements or alterations. However, agencies must not enter into commitments concerning improvements or alterations without GSA's prior approval.

PROTECTION AND MAINTENANCE

§ 102–75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?

The landholding agency remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to

another Federal agency or disposal. Guidelines for protection and maintenance of excess and surplus real property are in the GSA Customer Guide to Real Property Disposal. The landholding agency is responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

§ 102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?

Generally, the landholding agency is responsible for the cost of protection and maintenance of excess or surplus property until the property is transferred or disposed, but not more than 15 months. However, the landholding agency is responsible for providing and funding protection and maintenance during any delay beyond that 15 month period, if the landholding agency—

(a) Requests deferral of the disposal beyond the 15 month period;

(b) Continues to occupy the property beyond the 15 month period to the detriment of orderly disposal; or

(c) Otherwise takes actions that result in a delay in the disposition beyond the 15 months.

§ 102–75.975 What happens if the property is not conveyed or disposed of during this time frame?

If the property is not transferred to a Federal agency or disposed of during the 15-month period mentioned in § 102–75.970, then the disposal agency must pay or reimburse the landholding agency for protection and maintenance expenses incurred from the expiration date of said time period to final disposal, unless—

(a) There is no written agreement between the landholding agency and the disposal agency specifying the maximum amount of protection and maintenance expenses for which the disposal agency is responsible;

(b) The disposal agency's appropriation, as authorized by Congress, does not contain a provision to allow for payment and/or reimbursement of protection and maintenance expenses; or

(c) The delay is caused by an Executive agency's request for an exception from the 100 percent reimbursement requirement specified in § 102–75.205. In this latter case, the requesting agency becomes responsible for protection and maintenance expenses incurred because of the delay.

§ 102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?

If there is no written agreement (between the landholding agency and the disposal agency) or no Congressional appropriation to the disposal agency, the landholding agency is responsible for all protection and maintenance expenses, without any right of contribution or reimbursement from the disposal agency.

ASSISTANCE IN DISPOSITION

§ 102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?

Yes, the landholding agency must cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the landholding agency must absorb the entire cost of such actions.

Subpart E—Abandonment, Destruction, or Donation to Public Bodies

§ 102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?

Yes, subject to the restrictions in this subpart, any Federal agency having control of real property that has no commercial value or for which the estimated cost of continued care and handling exceeds the estimated proceeds from its sale, may—

(a) Abandon or destroy Government-owned improvements and related personal property located on privately-owned land;

(b) Destroy Government-owned improvements and related personal property located on Government-owned land (abandonment of such property is not authorized); or

(c) Donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein.

DANGEROUS PROPERTY

§ 102–75.995 May Federal agencies dispose of dangerous property?

No, property that is dangerous to public health or safety must be made harmless or have adequate safeguards in place before it can be abandoned, destroyed, or donated to public bodies.

DETERMINATIONS

§ 102–75.1000 How is the decision made to abandon, destroy, or donate property?

No property shall be abandoned, destroyed, or donated by a Federal agency under § 102–75.990, unless a duly authorized official of that agency determines, in writing, that—

(a) The property has no commercial value; or

(b) The estimated cost of its continued care and handling exceeds the estimated proceeds from its sale.

§ 102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?

Only a duly authorized official of that agency not directly accountable for the subject property can make the determination.

§ 102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?

A reviewing authority must approve determinations made under § 102–75.1000 before any such disposal, whenever all the property proposed to be disposed of by a Federal agency has a current estimated fair market value of more than $50,000.

RESTRICTIONS

§ 102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?

Yes, Federal agencies must obtain prior concurrence of GSA before donating to public bodies—

(a) Improvements on land or related personal property having a current estimated fair market value in excess of $250,000; and

(b) Land, regardless of cost.

DISPOSAL COSTS

§ 102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?

Yes, any public body receiving donated improvements on land or related personal property must pay the disposal costs associated with the donation, such as dismantling, removal, and the cleaning up of the premises.

ABANDONMENT AND DESTRUCTION

§ 102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?

A Federal agency may not abandon or destroy improvements on land or related personal property unless a duly authorized official of that agency finds, in writing, that donating the property is not feasible. This written finding is in addition to the determination prescribed in §§ 102–75.1000, 102–75.1005, and 102–75.1010. If donating the property becomes feasible at any time prior to actually abandoning or destroying the property, the Federal agency must donate it.

§ 102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?

No, Federal agencies may not abandon or destroy property in a manner that is detrimental or dangerous to public health or safety or that will infringe on the rights of other persons.

§ 102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?

Yes, GSA must concur in an agency's abandonment or destruction of improvements on land or related personal property prior to abandoning or destroying such improvements on land or related personal property—

(a) That are of permanent type construction; or

(b) The retention of which would enhance the value of the underlying land, if it were to be made available for sale or lease.

§ 102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?

Except as provided in § 102–75.1045, a Federal agency must not abandon or destroy improvements on land or related personal property until after it has given public notice of the proposed abandonment or destruction. This notice must be given in the area in which the property is located, must contain a general description of the property to be abandoned or destroyed, and must include an offering of the property for sale. A copy of the notice must be given to the GSA regional property disposal office for the region in which the property is located.

§ 102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?

Yes, property can be abandoned or destroyed without public notice if—

(a) Its value is so low or the cost of its care and handling so great that retaining the property to post public notice is clearly not economical;

(b) Health, safety, or security considerations require its immediate abandonment or destruction; or

(c) The assigned mission of the agency might be jeopardized by the delay, and a duly authorized Federal agency official finds in writing, with respect to paragraph (a), (b), or (c) of this section, and a reviewing authority approves this finding. The finding must be in addition to the determinations prescribed in §§ 102–75.1000, 102–75.1005, 102–75.1010, and 102–75.1025.

§ 102–75.1050 Is there any property for which this subpart does not apply?

Yes, this subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to 40 U.S.C. 550(c) or (d).

Subpart F—Delegations

DELEGATION TO THE DEPARTMENT OF DEFENSE (DOD)

§ 102–75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?

GSA delegates to the Secretary of Defense the authority to determine that Federal agencies do not need Department of Defense controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

§ 102–75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

§ 102–75.1065 When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

§ 102–75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?

Yes, the Secretary of Defense may redelegate the authority delegated in § 102–75.1055 to any officer or employee of the Department of Defense.

DELEGATION TO THE DEPARTMENT OF AGRICULTURE (USDA)

§ 102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?

GSA delegates authority to the Secretary of Agriculture to determine that Federal agencies do not need USDA-controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

§ 102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

§ 102–75.1085 When using a delegation of real property disposal authority under this subpart, is USDA required to report excess property to GSA?

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

§ 102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?

Yes, the Secretary of Agriculture may redelegate authority delegated in § 102–75.1075 to any officer or employee of the Department of Agriculture.

DELEGATION TO THE DEPARTMENT OF THE INTERIOR

§ 102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?

GSA delegates authority to the Secretary of the Interior to—

(a) Maintain custody, control, and accountability for mineral resources in, on, or under Federal real property that the Administrator or his designee occasionally designates as currently utilized, excess, or surplus to the Government's needs;

(b) Dispose of mineral resources by lease and to administer those leases that are made; and

(c) Determine that Federal agencies do not need Department of the Interior controlled excess real property and related personal property with an estimated fair market value, including all components of the property, of less than $50,000; and to dispose of the property by means most advantageous to the United States.

§ 102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?

Yes, the Secretary of the Interior may redelegate this authority to any officer, official, or employee of the Department of the Interior.

§ 102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?

Under this authority, the Secretary of the Interior is responsible for—

(a) Maintaining proper inventory records, as head of the landholding agency;

(b) Monitoring the minerals as necessary, as head of the landholding agency, to prevent unauthorized mining or removal of the minerals;

(c) Securing any appraisals deemed necessary by the Secretary;

(d) Coordinating with all surface landowners, Federal or otherwise, to prevent unnecessary interference with the surface use;

(e) Restoring damaged or disturbed lands after removal of the mineral deposits;

(f) Notifying the Administrator of General Services when the disposal of

all marketable mineral deposits is complete;

(g) Complying with the applicable environmental laws and regulations, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930);

(h) Forwarding promptly to the Administrator of General Services copies of any agreements executed under this authority; and

(i) Providing the Administrator of General Services with an annual accounting of the proceeds received from leases executed under this authority.

NATIVE AMERICAN-RELATED DELEGATIONS

§ 102–75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?

GSA delegates authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education to transfer and to retransfer to each other, upon request, any of the property of each agency that is being used and will continue to be used in the administration of any functions relating to the Native Americans. The term property, as used in this delegation, includes real property and such personal property as the Secretary making the transfer or retransfer determines to be related personal property. The Departments must exercise the authority conferred in this section following applicable GSA regulations issued pursuant to the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code.

§ 102–75.1115 Are there any limitations or restrictions on this delegation of authority?

This authority must be used only in connection with property that the appropriate Secretary determines—

(a) Comprises a functional unit;

(b) Is located within the United States; and

(c) Has an acquisition cost of $100,000 or less, provided that the transfer or retransfer does not include property situated in any area that is recognized as an urban area or place as identified by the most recent decennial census.

§ 102–75.1120 Does the property have to be Federally screened?

No, screening is not required because it would accomplish no useful purpose, since the property subject to transfer or retransfer will continue to be used in the administration of any functions relating to Native Americans.

§ 102–75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?

Yes, transfers/retransfers under this delegation can be at no cost or without consideration, except—

(a) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(b) Whenever reimbursement at fair market value is required by subpart B of this part (entitled ''Utilization of Excess Real Property'').

§ 102–75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?

The Secretary requesting the transfer or retransfer must certify in writing that no funds are available to acquire the property. The Secretary transferring or retransferring the property may make any determination necessary that would otherwise be made by GSA to carry out the authority contained in this delegation.

§ 102–75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

Subpart G—Conditional Gifts of Real Property to Further the Defense Effort

§ 102–75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of Chapter 582–Public Law 537 (July 27, 1954) must notify the appropriate GSA regional property disposal office and must submit to GSA a recommendation indicating whether the Government should accept or reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions of other laws. Following receipt of such notification and recommendation, GSA must—

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and

(b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

§ 102–75.1145 What action must the Federal agency receiving an offer of a conditional gift take?

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate acceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

§ 102–75.1150 What happens to the gift if GSA determines it to be acceptable?

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

§ 102–75.1155 May an acceptable gift of property be converted to money?

GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account that will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

Subpart H—Use of Federal Real Property to Assist the Homeless

DEFINITIONS

§ 102–75.1160 What definitions apply to this subpart?

Applicant means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State, unit of local government, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State

law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 524.

GSA means the United States General Services Administration.

HHS means the United States Department of Health and Human Services.

Homeless means—

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a State law.

HUD means the United States Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either HHS for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100–526, 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private non-profit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with the McKinney-Vento Homeless Assistance Act of 1987, as amended (42 U.S.C. 11320).

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in § 102–75.1185.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1185.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable Executive agency or occupied in caretaker status only.

APPLICABILITY

§ 102–75.1165 What is the applicability of this subpart?

(a) This part applies to Federal real property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a court order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to 40 U.S.C. 523.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds, if title to the property is not held by a Federal landholding agency as defined in this part.

COLLECTING THE INFORMATION

§ 102–75.1170 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under 40 U.S.C. 524, Executive Order 12512, and subpart H of this part. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist

changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the FEDERAL REGISTER. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

SUITABILITY DETERMINATION

§ 102–75.1175 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties that were reported pursuant to the canvass described in § 102–75.1170(a), HUD will determine, under criteria set forth in § 102–75.1185, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1185.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1190(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the FEDERAL REGISTER of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the FEDERAL REGISTER that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the FEDERAL REGISTER.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in § 102–75.1160.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § 102–75.1190(a), upon receipt of which HUD will promptly publish the determination in the FEDERAL REGISTER. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

REAL PROPERTY REPORTED EXCESS TO GSA

§ 102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA that has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § 102–75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in § 102–75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § 102–75.1180(c) through § 102–75.1180(g).

(c) If a landholding agency reports a property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response that includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the FEDERAL REGISTER, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in § 102–75.965.

SUITABILITY CRITERIA

§ 102–75.1185 What are suitability criteria?

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial, commercial, or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers that provide the heating or power source for the property, and that meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, extensive deterioration, friable asbestos, PCBs, natural hazardous substances such as radon, periodic flooding, sinkholes, or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

(b) [Reserved]

DETERMINATION OF AVAILABILITY

§ 102–75.1190 What is the policy concerning determination of availability statements?

(a) Within 45 days after receipt of a letter from HUD pursuant to § 102–75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in § 102–75.1185.

(2) In the case of excess property that had previously been reported to GSA—

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

PUBLIC NOTICE OF DETERMINATION

§ 102–75.1195 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the last–45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the FEDERAL REGISTER a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1–800–927–7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the FEDERAL REGISTER. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the FEDERAL REGISTER a list of all properties reported pursuant to § 102–75.1170(b).

(e) HUD will publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the FEDERAL REGISTER will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

APPLICATION PROCESS

§ 102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

(a) *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the FEDERAL REGISTER.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, the name of the organization, and indicate whether it is a public body or a private, nonprofit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, Room 17A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if—

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a ''representative of the homeless,'' as specified in § 102–75.1160. The applicant must document its authority to hold real property. Private, non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions,

except for, in the case of leasing the property, local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally-Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or disability in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR § 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed, in writing, the applicable unit of general local government responsible for providing sewer, water, police, and fire services of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant applying for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to § 102–75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required

information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(i) *Services offered*. The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need*. The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time*. The amount of time necessary for the proposed program to become operational.

(iv) *Experience*. Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial ability*. The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in § 102–75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

ACTION ON APPROVED APPLICATIONS

§ 102–75.1205 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties*. (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property pursuant to a lease or permit.

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties*. (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with § 102–75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under 40 U.S.C. 550 (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under 40 U.S.C. 550(c) or (d) (education and health uses).

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the

decision will transmit to the appropriate committees of the Congress an explanatory statement that details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to 40 U.S.C. 550, and section 501(f) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 102–75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

UNSUITABLE PROPERTIES

§ 102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency will defer, for 20 days after the date that notice of a property is published in the FEDERAL REGISTER, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA, if a representative of the homeless files an appeal of unsuitability pursuant to § 102–75.1175(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

NO APPLICATIONS APPROVED

§ 102–75.1215 What action must be taken if there is no expression of interest?

(a) At the end of the 60-day holding period described in § 102–75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

Subpart I—Screening of Federal Real Property

§ 102–75.1220 How do landholding agencies find out if excess Federal real property is available?

If agencies report excess real and related personal property to GSA, GSA conducts a ''Federal screening'' for the property. Federal screening consists of developing a ''Notice of Availability'' and circulating the ''Notice'' among all Federal landholding agencies for a maximum of 30 days.

§ 102–75.1225 What details are provided in the "Notice of Availability"?

The ''Notice of Availability'' describes the physical characteristics of the property; it also provides information on location, hazards or restrictions, contact information, and a date by which an interested Federal agency must respond in writing to indicate a definite or potential need for the property.

§ 102–75.1230 How long does an agency have to indicate its interest in the property?

Generally, agencies have 30 days to express written interest in the property. However, sometimes GSA has cause to conduct an expedited screening of the real property and the time allotted for responding is less than 30 days. The Notice of Availability always contains a ''respond by'' date.

§ 102–75.1235 Where should an agency send its written response to the "Notice of Availability"?

Look for the contact information provided in the Notice of Availability. Most likely, an agency will be directed to contact one of GSA's regional offices.

§ 102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA's "Notice of Availability"?

An authorized official of the landholding agency must sign the written response to the Notice of Availability. An ''authorized official'' is one who is responsible for acquisition and/or disposal decisions (e.g., head of the agency or official designee).

§ 102–75.1245 What happens after the landholding agency properly responds to a "Notice of Availability"?

The landholding agency has 60 days (from the expiration date of the ''Notice of Availability'') to submit a formal transfer request for the property. Absent a formal request for transfer within the prescribed 60 days, GSA may, at its discretion, pursue other disposal options.

§ 102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?

If the written response to the ''Notice of Availability'' indicates a potential need, then the agency has an additional 30 days (from the expiration date of the ''Notice of Availability'') to determine whether or not its has a definite requirement for the property, and then 60 days to submit a transfer request.

§ 102–75.1255 What happens when more than one agency has a valid interest in the property?

GSA will attempt to facilitate an equitable solution between the agencies involved. However, the Administrator has final decision making authority in determining which requirement aligns with the Federal Government's best interests.

§ 102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?

No. GSA may waive the Federal screening for excess real property when it determines that doing so is in the best interest of the Federal Government.

Below is a sample list of some of the factors GSA may consider when making the decision to waive Federal screening. This list is a representative sample and is not all-inclusive:

(a) There is a known Federal need;

(b) The property is located within the boundaries of tribal lands;

(c) The property has known disposal limitations precluding further Federal use (e.g., title and/or utilization restrictions; reported excess specifically for participation in the Relocation Program; reported excess for transfer to the current operating contractor who will continue production according to the terms of the disposal documents; directed for disposal by law or special legislation);

(d) The property will be transferred to a ''potentially responsible party'' (PRP) that stored, released, or disposed of hazardous substances at the Government-owned facility;

(e) The property is an easement;

(f) The excess property is actually a leasehold interest where there are Government-owned improvements with substantial value and cannot be easily removed;

(g) Government-owned improvements on Government-owned land, where the land is neither excess nor expected to become excess; or

(h) Screening for public benefit uses, except for the McKinney-Vento homeless screening, for specific property disposal considerations (see § 102–75.351).

§ 102–75.1265 Are extensions granted to the Federal screening and response timeframes?

Generally, no. GSA believes the timeframes are sufficient for agencies to make a decision and respond. Requests for extensions must be strongly justified and approved by the appropriate GSA Regional Administrator. For example, agencies may request an extension of time to submit their formal transfer request if they are not promptly provided GSA's estimate of FMV after submission of the initial expression of interest. Agencies requesting extensions must also submit an agreement accepting responsibility for providing and funding protection and maintenance for the requested property during the period of the extension until the property is transferred to the requesting agency or the requesting agency notifies GSA that it is no longer interested in the property. This assumption of protection and maintenance responsibility also applies to extensions associated with a requesting agency's request for an exception from the 100 percent reimbursement requirement (see § 102–75.205).

§ 102–75.1270 How does an agency request a transfer of Federal real property?

Agencies must use GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

§ 102–75.1275 Does a requesting agency have to pay for excess real property?

Yes. GSA is required by law to obtain full fair market value (as determined by the Administrator) for all real property (see § 102–75.190), except when a transfer without reimbursement has been authorized (see § 102–75.205). GSA, upon receipt of a valid expression of interest, will promptly provide each interested landholding agency with an estimate of fair market value for the property. GSA may transfer property without reimbursement, if directed to do so by law or special legislation and for the following purposes:

(a) Migratory Bird Management under Pub. L. 80–537, as amended by Pub. L. 92–432.

(b) Wildlife Conservation under Pub. L. 80–537.

(c) Federal Correctional facilities.

(d) Joint Surveillance System.

§ 102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?

GSA can redesignate surplus property as excess property, if the agency requests the property for use in direct support of its mission and GSA is satisfied that this transfer would be in the best interests of the Federal Government.

§ 102–75.1285 How does GSA transfer excess real property to the requesting agency?

GSA transfers the property via letter assigning ''custody and accountability'' for the property to the requesting agency. Title to the property is held in the name of the United States; however, the requesting agency becomes the landholding agency and is responsible for providing and funding protection and maintenance for the property.

§ 102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?

(a) The requesting agency must assume protection and maintenance responsibilities for the property within 30 days of the date of the letter assigning custody and accountability for the property.

(b) After notifying the requesting agency, GSA may, at its discretion, pursue other disposal options.

PART 102–76—DESIGN AND CONSTRUCTION

Subpart A—General Provisions

Sec.
102–76.5 What is the scope of this part?
102–76.10 What basic design and construction policy governs Federal agencies?

Subpart B—Design and Construction

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 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?
102–76.40 To which real property actions does NEPA apply?
102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?

SUSTAINABLE DEVELOPMENT

102–76.50 What is sustainable development?
102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?

Subpart C—Architectural Barriers Act

102–76.60 To which facilities does the Architectural Barriers Act Apply?
102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?
102–76.70 When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in §102–76.65(a)?
102–76.75 What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in §102–76.65(a)?
102–76.80 What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in §102–76.65(a)?
102–76.85 What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in §102–76.65(a)?
102–76.90 Who has the authority to waive or modify the standards in §102–76.65(a)?
102–76.95 What recordkeeping responsibilities do Federal agencies have?

AUTHORITY: 40 U.S.C. 121(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583); 42 U.S.C. 4152; 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: 70 FR 67845, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–76.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The accessibility standards in subpart C of this part apply to Federal agencies and other entities whose facilities are subject to the Architectural Barriers Act.

[70 FR 67845, Nov. 8, 2005, as amended at 72 FR 5943, Feb. 8, 2007]

§ 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. 3310 and 3312.)

(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 disabled.

(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 §§ 102–73.35 and 102–73.40 of this chapter.

Subpart B—Design and Construction

§ 102–76.15 What are design and construction services?

Design and construction services are—

(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;

(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 of 1966, as amended, 16 U.S.C. 470 *et seq.*, for each project; and

(g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies, consistent with the Interagency Security Committee standards and guidelines.

§ 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.

(b) Provide individuals with disabilities ready access to, and use of, the facilities in accordance with the standards in § 102–76.65.

(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 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?

Federal agencies must follow the seismic safety standards identified in § 102–80.45 of this chapter.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

§ 102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?

The purpose of NEPA is to—

(a) Declare a national policy which will encourage productive and enjoyable harmony between man and his environment;

(b) Promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;

(c) Enrich the understanding of the ecological systems and natural resources important to the Nation; and

(d) Establish a Council on Environmental Quality (CEQ).

§ 102–76.40 To which real property actions does NEPA apply?

NEPA applies to actions that may have an impact on the quality of the human environment, including leasing, acquiring, developing, managing and disposing of real property.

§ 102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?

Federal agencies must follow the procedures identified in the Council on Environmental Quality's NEPA implementing regulations, 40 CFR 1500–1508. In addition, Federal agencies must follow the standards that they have promulgated to implement CEQ's regulations.

SUSTAINABLE DEVELOPMENT

§ 102–76.50 What is sustainable development?

Sustainable development means integrating the decision-making process across the organization, so that every decision is made to promote the greatest long-term benefits. It means eliminating the concept of waste and building on natural processes and energy flows and cycles; and recognizing the interrelationship of our actions with the natural world.

§ 102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?

In keeping with the objectives of Executive Order 13123, ''Greening of the Government Through Efficient Energy Management,'' and Executive Order 13101, ''Greening of the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' Federal agencies must apply sustainable development principles to the siting, design, and construction of new facilities, which include—

(a) Optimizing site potential;

(b) Minimizing non-renewable energy consumption;

(c) Using environmentally preferable products;

(d) Protecting and conserving water;

(e) Enhancing indoor environmental quality; and

(f) Optimizing operational and maintenance practices.

Subpart C—Architectural Barriers Act

§ 102–76.60 To which facilities does the Architectural Barriers Act apply?

(a) The Architectural Barriers Act applies to any facility that is intended for use by the public or that may result in the employment or residence therein of individuals with disabilities, which is to be—

(1) Constructed or altered by, or on behalf of, the United States;

(2) Leased in whole or in part by the United States;

(3) Financed in whole or in part by a grant or loan made by the United States, if the building or facility is subject to standards for design, construction, or alteration issued under the authority of the law authorizing such a grant or loan; or

(4) Constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(b) The Architectural Barriers Act does not apply to any privately owned residential facility unless leased by the Government for subsidized housing programs, and any facility on a military reservation designed and constructed primarily for use by able bodied military personnel.

§ 102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?

(a) GSA adopts Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the

Architectural Barriers Act Accessibility Standard (ABAAS). Facilities subject to the Architectural Barriers Act (other than facilities described in paragraphs (b) and (c) of this section) must comply with ABAAS as set forth below:

(1) For construction or alteration of facilities subject to the Architectural Barriers Act (other than Federal lease-construction and other lease actions described in paragraphs (a)(2) and (3), respectively, of this section), compliance with ABAAS is required if the construction or alteration commenced after May 8, 2006. If the construction or alteration of such a facility commenced on or before May 8, 2006, compliance with the Uniform Federal Accessibility Standards (UFAS) is required.

(2) For Federal lease-construction actions subject to the Architectural Barriers Act, where the Government expressly requires new construction to meet its needs, compliance with ABAAS is required for all such leases awarded on or after June 30, 2006. UFAS compliance is required for all such leases awarded before June 30, 2006.

(3) For all other lease actions subject to the Architectural Barriers Act (other than those described in paragraph (a)(2) of this section), compliance with ABAAS is required for all such leases awarded pursuant to solicitations issued after February 6, 2007. UFAS compliance is required for all such leases awarded pursuant to solicitations issued on or before February 6, 2007.

(b) Residential facilities subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service facilities subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

[70 FR 67845, Nov. 8, 2005, as amended at 71 FR 52499, Sept. 6, 2006; 72 FR 5943, Feb. 8, 2007]

§ 102–76.70 When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations when they exceed 20 percent of the costs of the alterations to the primary function area. If a series of small alterations are made to areas containing a primary function and the costs of any of the alterations considered individually would not result in providing an accessible path of travel to the altered areas, the total costs of the alterations made within the three year period after the initial alteration must be considered when determining whether the costs of alterations to provide an accessible path of travel to the altered areas are disproportionate. Facilities for which new leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations.

§ 102–76.75 What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function include the costs associated with—

(a) Providing an accessible route to connect the altered area and site arrival points, including but not limited to interior and exterior ramps, elevators and lifts, and curb ramps;

(b) Making entrances serving the altered area accessible, including but not limited to widening doorways and installing accessible hardware;

(c) Making restrooms serving the altered area accessible, including, but

not limited to, enlarging toilet stalls, installing grab bars and accessible faucet controls, and insulating pipes under lavatories;

(d) Making public telephones serving the altered area accessible, including, but not limited to, placing telephones at an accessible height, and installing amplification devices and TTYs;

(e) Making drinking fountains serving the altered area accessible; and

(f) Making parking spaces serving the altered area accessible.

§ 102–76.80 What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations, the path of travel must be made accessible to the extent possible without exceeding 20 percent of the costs of the alterations to the primary function area. Priority should be given to those elements that will provide the greatest access in the following order:

(a) An accessible route and an accessible entrance;

(b) At least one accessible restroom for each sex or a single unisex restroom;

(c) Accessible telephones;

(d) Accessible drinking fountains; and

(e) Accessible parking spaces.

§ 102–76.85 What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a)?

For purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a), a primary function area is an area that contains a major activity for which the leased facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the leased facility are carried out.

§ 102–76.90 Who has the authority to waive or modify the standards in § 102–76.65(a)?

The Administrator of General Services has the authority to waive or modify the standards in § 102–76.65(a) on a case-by-case basis if the agency head or GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary.

§ 102–76.95 What recordkeeping responsibilities do Federal agencies have?

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction or alteration of a facility and on each lease for a facility subject to the standards in § 102–76.65(a) containing one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards.

(4) The standards have been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a facility is not subject to the standards in § 102–76.65(a) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.

PART 102–77—ART-IN-ARCHITECTURE

Subpart A—General Provisions

Sec.

102–77.5 What is the scope of this part?

102–77.10 What basic Art-in-Architecture policy governs Federal agencies?

Subpart B—Art-in-Architecture

102–77.15 Who funds the Art-in-Architecture efforts?
102–77.20 With whom should Federal agencies collaborate 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. 121 and 3306.

SOURCE: 70 FR 67847, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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.

Subpart B—Art-in-Architecture

§ 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 With whom 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 and 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

Subpart A—General Provisions

Sec.
102–78.5 What is the scope of this part?
102–78.10 What basic historic preservation policy governs Federal agencies?

Subpart B—Historic Preservation

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 Who 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 an 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 provide historic preservation services?
102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?
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. 470h–2; 40 U.S.C. 121(c) and 581.

SOURCE: 70 FR 67848, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings 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 of 1966, as amended (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.

Subpart B—Historic Preservation

§ 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 funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those—

(a) Carried out by or on behalf of the agency;

(b) Carried out with Federal financial assistance; or

(c) Requiring a Federal permit, license, or approval.

§ 102–78.30 Who 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), which 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; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; other individuals and organizations

with a demonstrated interest in the undertaking; and the Advisory Council (if it elects to participate in the consultation).

§ 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 it is feasible and prudent to do so. 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.

(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 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?

Yes, Executive Order 13006 requires Federal agencies that have a mission requirement to locate in an urban area to give first consideration to space in historic buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent to space in historic buildings and districts, in accordance with §§ 102–73.120 and 102–73.125 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 use, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of the Interior's approval of the plans of transferees of surplus Federally-owned historic properties; and

(b) Review all proposed excess actions to identify any properties listed in or eligible for listing in 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

Subpart A—General Provisions

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?

Subpart B—Assignment and Utilization of Space

102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

ASSIGNMENT OF SPACE

102–79.20 What standard must Executive agencies promote when assigning space?

CHILD CARE

102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?

FITNESS CENTERS

102–79.30 May 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?

FEDERAL CREDIT UNIONS

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?

UTILIZATION OF SPACE

102–79.50 What standard must Executive agencies promote in their utilization of space?
102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?
102–79.60 Are agencies required to use historic properties available to the agency?

OUTLEASING

102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?

SITING ANTENNAS ON FEDERAL PROPERTY

102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?
102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?
102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?
102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?
102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?
102–79.95 Who is responsible for the costs associated with providing access to antenna sites?
102–79.100 What must Federal agencies do with antenna siting fees that they collect?

INTEGRATED WORKPLACE

102–79.105 What is the Integrated Workplace?
102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?
102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?

PUBLIC ACCESS DEFIBRILLATION PROGRAMS

102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

AUTHORITY: 40 U.S.C. 121(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: 70 FR 67849, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–79.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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.

Subpart B—Assignment and Utilization of Space

§ 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.

ASSIGNMENT OF SPACE

§ 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 an economical cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

CHILD CARE

§ 102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?

Yes, in accordance with 40 U.S.C. 590, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if such—

(a) Space is available;

(b) 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) Agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

FITNESS CENTERS

§ 102–79.30 May 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.

(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 that 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.

FEDERAL CREDIT UNIONS

§ 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) 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).

UTILIZATION OF SPACE

§ 102–79.50 What standard must Executive agencies promote in their utilization of space?

Executive agencies, when acquiring or utilizing Federally owned or leased space under Title 40 of the United States Code, must promote efficient utilization of space. Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through the issuance of permits, licenses or leases to non-Federal entities to the extent authorized by law. (For vacant property determined excess to agency needs, refer to part 102-75, Real Property Disposal.)

§ 102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Yes, Federal agencies must—

(a) First utilize space in Government-owned and Government-leased buildings; and

(b) If there is no suitable space in Government-owned and Government-leased buildings, utilize space in buildings under the custody and control of the U.S. Postal Service; and

(c) If there is no suitable space in buildings under the custody and control of the U.S. Postal Service, agencies may acquire real estate by lease, purchase, or construction, as specified in part 102–73 of this chapter.

§ 102–79.60 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).

OUTLEASING

§ 102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?

Yes. Authority to execute such outleases may be delegated by the Administrator based on authorities provided by the Public Buildings Cooperative Use Act (40 U.S.C. § 581(h)), the proceeds of which are to be deposited into GSA's Federal Buildings Fund. Using such authority, Executive agencies, upon approval from GSA, may—

(a) Enter into leases of space on major public access levels, courtyards and rooftops of any public building with persons, firms, or organizations

engaged in commercial, cultural, educational, or recreational activities (as defined in 40 U.S.C. 3306);

(b) Establish rental rates for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building; and

(c) Use leases that contain terms and conditions that the Administrator deems necessary to promote competition and protect the public interest.

SITING ANTENNAS ON FEDERAL PROPERTY

§ 102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?

Yes. Executive agencies, upon approval from GSA, may assess fees for placement of antennas and supporting services against other agencies (that own these antennas) under 40 U.S.C. 586(c) and 40 U.S.C. 121(e). Unless a differing rate has been approved by the Administrator, such fees or charges must approximate commercial charges for comparable space and services (i.e., market rates). The proceeds from such charges or fees must be credited to the appropriation or fund initially charged for providing the space or services. Any amounts in excess of actual operating and maintenance costs must be credited to miscellaneous receipts unless otherwise provided by law. The charges or fees assessed by the Administrator for the placement of antennas and supporting services in GSA-controlled space are generally credited to GSA's Federal Buildings Fund.

§ 102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

Yes. Executive agencies in GSA-controlled space, upon approval from GSA, may assess fees for antenna placements against public service organizations under 40 U.S.C. 581(h) and 40 U.S.C. 121(e). Such fees or rental rates must be equivalent to the prevailing commercial rate for comparable space devoted to commercial antenna placements in the vicinity of the public building and the proceeds from such charges or fees must be credited to GSA's Federal Buildings Fund.

§ 102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

Yes. GSA, or other Executive agencies, upon approval from GSA, may charge fees based on market value to telecommunication service providers for antenna placements in public buildings. Market value should be equivalent to the prevailing commercial rate for comparable space for commercial antenna placements in the vicinity of the public building. Such fees must be credited to GSA's Federal Buildings Fund.

§ 102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?

Executive agencies will make antenna sites available on a fair, reasonable, and nondiscriminatory basis. Collocation of antennas should be encouraged where there are multiple antenna siting requests for the same location. In cases where this is not feasible and space availability precludes accommodating all antenna siting applicants, competitive procedures may be used. This should be done in accordance with applicable Federal, State and local laws and regulations, and consistent with national security concerns. In making antenna sites available, agencies must avoid electromagnetic intermodulations and interferences. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget.

§ 102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?

When evaluating antenna siting requests, Executive agencies must consider issues such as—

(a) Public health and safety with respect to the antenna installation and maintenance;

(b) Aesthetics;

(c) Effects on historic districts, sites, buildings, monuments, structures, or other objects pursuant to the National Historic Preservation Act of 1966, as amended, and implementing regulations;

(d) Protection of natural and cultural resources (e.g., National Parks and Wilderness areas, National Wildlife Refuge systems);

(e) Compliance with the appropriate level of review and documentation as necessary under the National Environmental Policy Act of 1969, as amended, and implementing regulations of each Federal department and agency responsible for the antenna siting project, and the Federal Aviation Administration, the National Telecommunications and Information Administration, and other relevant departments and agencies;

(f) Compliance with the Federal Communications Commission's (FCC) guidelines for radiofrequency exposure, ET Docket No. 93–62, entitled ''Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation,'' issued August 1, 1996, and any other order on reconsideration relating to radiofrequency guidelines and their enforcement. These are updated guidelines for meeting health concerns that reflect the latest scientific knowledge in this area, and are supported by Federal health and safety agencies such as the Environmental Protection Agency and the Food and Drug Administration; and

(g) Any requirements of the Federal agency managing the facility, FCC, Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget. In addition, the National Capital Planning Commission should be consulted for siting requests within the Washington, D.C. metropolitan area.

§ 102–79.95 Who is responsible for the costs associated with providing access to antenna sites?

The telecommunications service provider is responsible for any reasonable costs to Federal agencies associated with providing access to antenna sites, including obtaining appropriate clearance of provider personnel for access to buildings or land deemed to be security sensitive as is done with service contractor personnel. OMB Circular A–25, entitled ''User Charges,'' revised July 8, 1993, provides guidelines that agencies should use to assess fees for Government services and for the sale or use of Government property or resources. For antenna sites on non-GSA property, see also the Department of Commerce Report on ''Improving Rights-of-Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment'' (April 2004) beginning at page 26. Under 40 U.S.C. 1314, GSA is covered in granting easements and permits to support the installation of antennas and cabling across raw land in support of constructing new and improving existing telecommunication infrastructures provided that such installation does not negatively impact on the Government.

§ 102–79.100 What must Federal agencies do with antenna siting fees that they collect?

The account into which an antenna siting fee is to be deposited depends on the authority under which the antenna site is made available and the fee assessed. For GSA-controlled property outleased under 40 U.S.C. 581(h) or section 412 of Division H of public law 108–447, the fee is to be deposited into GSA's Federal Building Fund. For surplus property outleased under 40 U.S.C. 543, the fee is to be deposited in accordance with the provisions of Subchapter

IV of Chapter 5 of Subtitle I of Title 40 of the United States Code. For siting fees collected under other statutory authorities, the fees might be deposited into miscellaneous receipts, an account of the landholding agency, or as otherwise provided by law. Federal agencies should consult with their agency's legal advisors before depositing antenna proceed from sites on agency-controlled Federal property.

INTEGRATED WORKPLACE

§ 102–79.105 What is the Integrated Workplace?

The Integrated Workplace, developed by the GSA Office of Governmentwide Policy, is a comprehensive, multidisciplinary approach to developing workspace and work strategies that best support an organization's strategic business goals and work processes, and have the flexibility to accommodate the changing needs of the occupants and the organization. Integrated Workplace concepts support the objectives of Executive Order 13327, ''Federal Real Property Asset Management,'' which calls for the enhancement of Federal agency productivity through an improved working environment.

§ 102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?

Federal agencies must strive to design work places that—

(a) Are developed using sustainable development concepts (see § 102–76.55);

(b) Align with the organization's mission and strategic plan;

(c) Serve the needs and work practices of the occupants;

(d) Can be quickly and inexpensively adjusted by the user to maximize his or her productivity and satisfaction;

(e) Are comfortable, efficient, and technologically advanced and allow people to accomplish their work in the most efficient way;

(f) Meet the office's needs and can justify its cost through the benefits gained;

(g) Are developed with an integrated building systems approach;

(h) Are based on a life cycle cost analysis that considers both facility and human capital costs over a substantial time period; and

(i) Support alternative workplace arrangements, including telecommuting, hoteling, virtual offices, and other distributive work arrangements (see part 102–74, subpart F—Telework).

§ 102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?

The GSA Office of Governmentwide Policy provides additional guidance in its publication entitled ''Innovative Workplace Strategies.''

PUBLIC ACCESS DEFIBRILLATION PROGRAMS

§ 102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

Federal agencies electing to establish a public access defibrillation program in a Federal facility must follow the guidelines, entitled ''Guidelines for Public Access Defibrillation Programs in Federal Facilities,'' which can be obtained from the Office of Governmentwide Policy, Office of Real Property (MP), General Services Administration, 1800 F Street, NW, Washington, DC 20405.

PART 102–80—SAFETY AND ENVIRONMENTAL MANAGEMENT

Subpart A—General Provisions

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?

Subpart B—Safety and Environmental Management

ASBESTOS

102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

RADON

102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

INDOOR AIR QUALITY

102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

LEAD

102–80.30 What are Federal agencies' responsibilities concerning lead?

HAZARDOUS MATERIALS AND WASTES

102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

UNDERGROUND STORAGE TANKS

102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

SEISMIC SAFETY

102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

RISKS AND RISK REDUCTION STRATEGIES

102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

FACILITY ASSESSMENTS

102–80.60 Are Federal agencies responsible for performing facility assessments?

INCIDENT INVESTIGATION

102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

RESPONSIBILITY FOR INFORMING TENANTS

102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

ASSESSMENT OF ENVIRONMENTAL ISSUES

102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Subpart C—Accident and Fire Prevention

102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

STATE AND LOCAL CODES

102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

FIRE ADMINISTRATION AUTHORIZATION ACT OF 1992

102–80.90 Is the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) relevant to fire protection engineering?

102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

AUTOMATIC SPRINKLER SYSTEMS

102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

EQUIVALENT LEVEL OF SAFETY ANALYSIS

102–80.105 What information must be included in an equivalent level of safety analysis?

102–80.110 What must an equivalent level of safety analysis indicate?

102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

102–80.130 Who must perform the equivalent level of safety analysis?

102–80.135 Who is a qualified fire protection engineer?

ROOM OF ORIGIN

102–80.140 What is meant by ''room of origin''?

FLASHOVER

102–80.145 What is meant by ''flashover''?

REASONABLE WORST CASE FIRE SCENARIO

102–80.150 What is meant by ''reasonable worst case fire scenario''?

AUTHORITY: 40 U.S.C. 121(c) and 581–593.

SOURCE: 70 FR 67852, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–80.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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 decision makers aware of risks; and

(g) Act promptly and appropriately in response to risk.

Subpart B—Safety and Environmental Management

ASBESTOS

§ 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 U.S. 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.

(e) Communicate all written and oral asbestos information about the leased space to tenants.

RADON

§ 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.

(b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must retest, as required, to adhere to EPA standards.

INDOOR AIR QUALITY

§ 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.

LEAD

§ 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 U.S. 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.

(f) Take corrective action when lead levels exceed the HUD Guidelines.

HAZARDOUS MATERIALS AND WASTES

§ 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 as follows:

(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 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 stored in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

UNDERGROUND STORAGE TANKS

§ 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 do not own to follow these requirements and to be responsible for the cost of compliance.

SEISMIC SAFETY

§ 102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

Federal agencies must follow the standards issued by the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings.

RISKS AND RISK REDUCTION STRATEGIES

§ 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental management risks and appropriate risk 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. Federal agencies must use the applicable national codes and standards as a guide for their building operations.

§ 102–80.55 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.

FACILITY ASSESSMENTS

§ 102–80.60 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.

INCIDENT INVESTIGATION

§ 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.

RESPONSIBILITY FOR INFORMING TENANTS

§ 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.

ASSESSMENT OF ENVIRONMENTAL ISSUES

§ 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 decision making process.

Subpart C—Accident and Fire Prevention

§ 102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

Federal agencies must—

(a) Comply with the occupational safety and health standards established in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596); Executive Order 12196; 29 CFR part 1960; and applicable safety and environmental management criteria identified in this part;

(b) Not expose occupants and visitors to unnecessary risks;

(c) Provide safeguards that minimize personal harm, property damage, and impairment of Governmental operations, and that allow emergency forces to accomplish their missions effectively;

(d) Follow accepted fire prevention practices in operating and managing buildings;

(e) To the maximum extent feasible, comply with one of the nationally recognized model building codes and with other nationally-recognized codes in their construction or alteration of each building in accordance with 40 U.S.C. 3312; and

(f) Use the applicable national codes and standards as a guide for their building operations.

STATE AND LOCAL CODES

§ 102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

Federally owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 3312, 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 code requirements and inspection.

FIRE ADMINISTRATION AUTHORIZATION ACT OF 1992

§ 102–80.90 Is the Fire Administration Authorization Act of 1992 (Public Law 102–522) relevant to fire protection engineering?

Yes, the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) requires sprinklers or an equivalent level of safety in certain types of Federal employee office buildings, Federal employee housing units, and Federally assisted housing units (15 U.S.C. 2227).

§ 102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

Yes, the Fire Administration Authorization Act applies to all Federal agencies and all Federally owned and leased buildings in the United States.

AUTOMATIC SPRINKLER SYSTEMS

§ 102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

The performance objective of the automatic sprinkler system is that it must be capable of protecting human lives. Sprinklers should be capable of controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

EQUIVALENT LEVEL OF SAFETY ANALYSIS

§ 102–80.105 What information must be included in an equivalent level of safety analysis?

The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities that impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues that must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

§ 102–80.110 What must an equivalent level of safety analysis indicate?

To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Fire Administration Authorization Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed.

§ 102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

Yes, the following are three options for establishing that an equivalent level of safety exists:

(a) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egress time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed reasonable worst case fire scenarios including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an equivalent level of safety.

(b) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the

time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an equivalent level of safety.

(c) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

§ 102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101A) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

§ 102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

The head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted equivalent level of safety analysis and provide copies to fire departments or other local authorities for use in developing pre-fire plans.

§ 102–80.130 Who must perform the equivalent level of safety analysis?

A qualified fire protection engineer must perform the equivalent level of safety analysis.

§ 102–80.135 Who is a qualified fire protection engineer?

A qualified fire protection engineer is defined as an individual with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(a) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or fire safety engineering, plus a minimum of 4 years work experience in fire protection engineering.

(b) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering.

(c) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

ROOM OF ORIGIN

§ 102–80.140 What is meant by "room of origin"?

Room of origin means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m2 (2000 ft2), including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the room of origin to the extent it did not exceed the 200 m2 (2000 ft2) limitation.

FLASHOVER

§ 102–80.145 What is meant by "flashover"?

Flashover means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m2 (1.8 Btu/ft2/sec).

REASONABLE WORST CASE FIRE SCENARIO

§ 102–80.150 What is meant by "reasonable worst case fire scenario"?

Reasonable worst case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire that would have a significant adverse impact on the building and its occupants. The development of reasonable worst case scenarios must include consideration of types and forms of fuels present (e.g., furniture, trash, paper, chemicals), potential fire ignition locations (e.g., bedroom, office, closet, corridor), occupant capabilities (e.g., awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

PART 102–81—SECURITY

Subpart A—General Provisions

Sec.

102–81.5 What is the scope of this part?
102–81.10 What basic security policy governs Federal agencies?

Subpart B—Security

102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased facility?
102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?
102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?
102–81.30 What information must job applicants at child care centers reveal?

AUTHORITY: 40 U.S.C. 121(c), 581–593, and 1315.

SOURCE: 70 FR 67856, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–81.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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 Secretary of the Department of Homeland Security must provide for the security and protection of the real estate they occupy, including the protection of persons within the property.

Subpart B—Security

§ 102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased 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.

§ 102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?

No, the minimum standards specified in the Department of Justice's June 28,

1995, study entitled ''Vulnerability Assessment of Federal Facilities'' identifies the minimum-security standards that agencies must adhere to for all existing owned and leased Federal facilities. As specified in § 102–81.25, new Federally owned and leased facilities must be designed to meet the standards identified in the document entitled ''Interagency Security Committee Security Design Criteria for New Federal Office Buildings and Major Modernization Projects,'' dated May 28, 2001. The security design criteria for new facilities takes into consideration technology developments, new cost consideration, the experience of practitioners applying the criteria, and the need to balance security requirements with public building environments that remain lively, open, and accessible.

§ 102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?

No, the Interagency Security Committee Security Design Criteria—

(a) Apply to new construction of general purpose office buildings and new or lease-construction of courthouses occupied by Federal employees in the United States and not under the jurisdiction and/or control of the Department of Defense. The criteria also apply to lease-construction projects being submitted to Congress for appropriations or authorization. Where prudent and appropriate, the criteria apply to major modernization projects; and

(b) Do not apply to airports, prisons, hospitals, clinics, and ports of entry, or to unique facilities such as those classified by the Department of Justice Vulnerability Assessment Study as Level V. Nor will the criteria overrule existing Federal laws and statutes, and other agency standards that have been developed for special facilities, such as border stations and child care centers.

§ 102–81.30 What information must job applicants at child care centers reveal?

Anyone who applies for employment (including volunteer positions) at a child care facility, located on Federally controlled property (including Federally leased property), must reveal any arrests and convictions on the job application. Employment at a child care facility means any position that involves work with minor children, such as a teacher, daycare worker, or school administrator.

PART 102–82—UTILITY SERVICES

Subpart A—General Provisions

Sec.
102–82.5 What is the scope of this part?
102–82.10 What basic utility services policy govern Executive agencies?

Subpart B—Utility Services

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. 121(c) and 501.

SOURCE: 70 FR 67856, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–82.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's 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 Title 40 of the United States Code must provide or procure services that promote economy and efficiency with due regard to the mission responsibilities of the agencies concerned.

Subpart B—Utility Services

§ 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 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. 501(b)(1)(B)).

PART 102–83—LOCATION OF SPACE

Subpart A—General Provisions

Sec.
102–83.5 What is the scope of this part?
102–83.10 What basic location of space policy governs an Executive agency?
102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Subpart B—Location of Space

DELINEATED AREA

102–83.20 What is a delineated area?
102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?
102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?
102–83.35 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?
102–83.40 Who must approve the final delineated area?
102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

RURAL AREAS

102–83.50 What is the Rural Development Act of 1972?
102–83.55 What is a rural area?
102–83.60 What is an urbanized area?
102–83.65 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

URBAN AREAS

102–83.70 What is Executive Order 12072?
102–83.75 What is Executive Order 13006?
102–83.80 What is an urban area?
102–83.85 What is a central business area?
102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?
102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?
102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?
102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?
102–83.110 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?
102–83.115 What is a central city?
102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?

PREFERENCE TO HISTORIC PROPERTIES

102–83.125 Are Executive agencies required to give preference to historic properties when acquiring leased space?

APPLICATION OF SOCIOECONOMIC CONSIDERATIONS

102–83.130 When must agencies consider the impact of a location decision on low- and moderate-income employees?

102–83.135 With whom must agencies consult in determining the availability of low- and moderate-income housing?

APPENDIX TO PART 102–83—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE GENERAL SERVICES ADMINISTRATION CONCERNING LOW- AND MODERATE-INCOME HOUSING

AUTHORITY: 40 U.S.C. 121(c); E.O. 12072; and E.O. 13006.

SOURCE: 70 FR 67857, Nov. 8, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 102–83.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–83.10 What basic location of space policy governs an Executive agency?

Each Executive agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies.

§ 102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Yes, Federal agencies must follow the hierarchy of consideration identified in § 102–79.55 of this chapter.

Subpart B—Location of Space

DELINEATED AREA

§ 102–83.20 What is a delineated area?

Delineated area means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

§ 102–83.25 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.

§ 102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?

Yes, Federal agencies must also consider real estate, labor, and other operational costs and applicable local incentives, when identifying the delineated area.

§ 102–83.35 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, as amended (41 U.S.C. 253(a)), Executive agencies must consider whether restricting the delineated area for obtaining leased space to the central business area (CBA) will provide for adequate competition when acquiring leased space. Where an Executive agency determines that the delineated area must be expanded beyond the CBA 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.

§ 102–83.40 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.

§ 102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

GSA's PBS provides guidance in its Customer Guide to Real Property on the process for appealing GSA's decisions and recommendations concerning delineated areas.

RURAL AREAS

§ 102–83.50 What is the Rural Development Act of 1972?

The Rural Development Act of 1972, as amended (7 U.S.C. 2204b–1), directs Federal agencies to develop policies and procedures to give first priority to the location of new offices and other Federal facilities in rural areas. The intent of the Rural Development Act is to revitalize and develop rural areas and to help foster a balance between rural and urban America.

§ 102–83.55 What is a rural area?

As defined in 7 U.S.C. 1991(a)(13)(A), rural area means any area other than—

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town.

§ 102–83.60 What is an urbanized area?

An urbanized area is a statistical geographic area defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

§ 102–83.65 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 in accordance with the Rural Development Act (7 U.S.C. 2204b–1), unless their mission or program requirements call for locations in an urban area. First priority to the location of new offices and other facilities in rural areas must be given in accordance with the hierarchy specified in § 102–79.55 of this chapter.

URBAN AREAS

§ 102–83.70 What is Executive Order 12072?

Executive Order 12072, entitled ''Federal Space Management,'' requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in central business areas, and/or adjacent areas of similar character, to use them to make downtowns attractive places to work, conserve existing resources, and encourage redevelopment. It also directs Executive agencies to consider opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

§ 102–83.75 What is Executive Order 13006?

Executive Order 13006, entitled ''Locating Federal Facilities on Historic Properties in Our Nation's Central Cities,'' requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in historic buildings and districts within central business areas. It also directs Executive agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation program.

§ 102–83.80 What is an urban area?

Urban area means any metropolitan area (MA) as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04, or succeeding OMB Bulletin, that does not meet the definition of rural area in § 102–83.55.

§ 102–83.85 What is a central business area?

Central business area (CBA) means the centralized community business area and adjacent areas of similar character, including other specific areas that may be recommended by

local officials in accordance with Executive Order 12072. The CBAs are designated by local government and not by Federal agencies.

§ 102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?

No, Executive Orders 12072 and 13006 only apply to agencies looking for space in urban areas.

§ 102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?

After an agency identifies its geographic service area and delineated area within which it wishes to locate specific activities are in an urban area (i.e., determined that the agency's mission requirements dictate a need to locate its facility in an urban area), Federal agencies must seek space in historic properties already under agency control, in accordance with section 110 of the National Historic Preservation Act. The National Historic Preservation Act provides that prior to purchasing, constructing or leasing new space, Federal agencies must—

(a) Consider agency-controlled historic properties within historic districts inside CBAs when locating Federal operations, in accordance with Executive Order 13006 (which, by reference, also incorporates the requirements in Executive Order 12072 and the Rural Development Act of 1972);

(b) Then consider agency-controlled developed or undeveloped sites within historic districts, if no suitable agency-controlled historic property specified in paragraph (a) of this section is available;

(c) Then consider agency-controlled historic properties outside of historic districts, if no suitable agency-controlled site exists within a historic district as specified in paragraph (b) of this section;

(d) Then consider non-historic agency-controlled properties, if no suitable agency-controlled historic properties outside of historic districts exist as specified in paragraph (c) of this section;

(e) Then consider historic properties under the custody and control of the U.S. Postal Service, if there is no available space in non-historic agency-controlled properties specified in paragraph (d) of this section.

(f) Then consider non-historic properties under the custody and control of the U.S. Postal Service, if there is no available space in historic properties under the custody and control of the U.S. Postal Service specified in paragraph (e) of this section.

§ 102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?

See § 102–73.20 of this chapter.

§ 102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?

If no suitable space in non-historic buildings under the custody and control of the U.S. Postal Service is available, agencies may then acquire real estate by purchase, lease, or construction, in accordance with FMR part 102–73.

§ 102–83.110 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, if an agency has a specific location need to be in an urban area, then Executive Orders 12072 and 13006 require that agencies should give first consideration to locating in a historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area.

§ 102–83.115 What is a central city?

Central cities are those central cities defined by OMB in OMB Bulletin No. 99–04, or succeeding OMB Bulletin.

§ 102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?

If an agency has a need to be in a specific urban area that is not a central city in a metropolitan area, then the agency must give first consideration to locating in a historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of the appropriate metropolitan area.

PREFERENCE TO HISTORIC PROPERTIES

§ 102–83.125 Are Executive agencies required to give preference to historic properties when acquiring leased space?

Yes, Federal agencies must give a price preference when acquiring space using either the lowest price technically acceptable or the best value tradeoff source selection process. See part 102–73 of this chapter for additional guidance.

APPLICATION OF SOCIOECONOMIC CONSIDERATIONS

§ 102–83.130 When must agencies consider the impact of location decisions on low- and moderate-income employees?

Federal agencies proposing locations for Federal construction or major lease actions involving the relocation of a major work force must consider the impact on employees with low and moderate incomes.

§ 102–83.135 With whom must agencies consult in determining the availability of low- and moderate-income housing?

Federal agencies must consult with the U.S. Department of Housing and Urban Development (HUD) in accordance with the Memorandum of Understanding (MOU) between HUD and GSA. The text of the HUD-GSA MOU is located in the appendix to this part.

APPENDIX TO PART 102–83—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE GENERAL SERVICES ADMINISTRATION CONCERNING LOW- AND MODERATE-INCOME HOUSING

Purpose. The purpose of the memorandum of understanding is to provide an effective, systematic arrangement under which the Federal Government, acting through HUD and GSA, will fulfill its responsibilities under law, and as a major employer, in accordance with the concepts of good management, to assure for its employees the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, and to consider the need for development and redevelopment of areas and the development of new communities and the impact on improving social and economic conditions in the area, whenever Federal Government facilities locate or relocate at new sites, and to use its resources and authority to aid in the achievement of these objectives.

1. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601) states, in section 801, that ''It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' Section 808(a) places the authority and responsibility for administering the Act in the Secretary of Housing and Urban Development. Section 808(d) requires all Executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of title VIII (fair housing) and to cooperate with the Secretary to further such purposes. Section 808(e)(5) provides that the Secretary of HUD shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of title VIII.

2. Section 2 of the Housing Act of 1949 (42 U.S.C. 1441) declares the national policy of ''* * * the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family

* * *.'' This goal was reaffirmed in the Housing and Urban Development Act of 1968 (sections 2 and 1601; 12 U.S.C. 1701t and 42 U.S.C. 1441a).

3. By virtue of the Public Buildings Act of 1959, as amended; the Federal Property and Administrative Services Act of 1949, as amended; and Reorganization Plan No. 18 of 1950, the Administrator of General Services is given certain authority and responsibility in connection with planning, developing, and constructing Government-owned public buildings for housing Federal agencies, and for acquiring leased space for Federal agency use.

4. Executive Order 11512, February 27, 1970, sets forth the policies by which the Administrator of General Services and the heads of Executive agencies will be guided in the acquisition of both federally owned and leased office buildings and space.

5. While Executive Order No. 11512 provides that material consideration will be given to the efficient performance of the missions and programs of the Executive agencies and the nature and functions of the facilities involved, there are six other guidelines set forth, including:

• The need for development and redevelopment of areas and the development of new communities, and the impact a selection will have on improving social and economic conditions in the area; and

• The availability of adequate low- and moderate-income housing, adequate access from other areas of the urban center, and adequacy of parking.

6. General Services Administration (GSA) recognizes its responsibility, in all its determinations with respect to the construction of Federal buildings and the acquisition of leased space, to consider to the maximum possible extent the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, in accordance with its duty affirmatively to further the purposes of title VIII of the Civil Rights Act of 1968 and with the authorities referred to in paragraph 2 above, and the guidelines referred to in paragraph 5 above, and consistent with the authorities cited in paragraphs 3 and 4 above. In connection with the foregoing statement, it is recognized that all the guidelines must be considered in each case, with the ultimate decision to be made by the Administrator of General Services upon his determination that such decision will improve the management and administration of governmental activities and services, and will foster the programs and policies of the Federal Government.

7. In addition to its fair housing responsibilities, the responsibilities of HUD include assisting in the development of the Nation's housing supply through programs of mortgage insurance, home ownership and rental housing assistance, rent supplements, below market interest rates, and low-rent public housing. Additional HUD program responsibilities which relate or impinge upon housing and community development include comprehensive planning assistance, metropolitan area planning coordination, new communities, relocation, urban renewal, model cities, rehabilitation loans and grants, neighborhood facilities grants, water and sewer grants, open space, public facilities loans, Operation BREAKTHROUGH, code enforcement, workable programs, and others.

8. In view of its responsibilities described in paragraphs 1 and 7 above, HUD possesses the necessary expertise to investigate, determine, and report to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis and to make findings as to such availability with respect to proposed locations for a federally-constructed building or leased space which would be consistent with such reports. HUD also possesses the necessary expertise to advise GSA and other Federal agencies with respect to actions which would increase the availability of low- and moderate-income housing on a nondiscriminatory basis, once a site has been selected for a federally-constructed building or a lease executed for space, as well as to assist in increasing the availability of such housing through its own programs such as those described in paragraph 7 above.

9. HUD and GSA agree that:

(a) GSA will pursue the achievement of low- and moderate-income housing objectives and fair housing objectives, in accordance with its responsibilities recognized in paragraph 6 above, in all determinations, tentative and final, with respect to the location of both federally constructed buildings and leased buildings and space, and will make all reasonable efforts to make this policy known to all persons, organizations, agencies and others concerned with federally owned and leased buildings and space in a manner which will aid in achieving such objectives.

(b) In view of the importance to the achievement of the objectives of this memorandum of agreement of the initial selection of a city or delineation of a general area for location of public buildings or leased space, GSA will provide the earliest possible notice to HUD of information with respect to such decisions so that HUD can carry out its responsibilities under this memorandum of agreement as effectively as possible.

(c) *Government-owned Public Buildings Projects*. (1) In the planning for each new public buildings project under the Public Buildings Act of 1959, during the survey preliminary to the preparation and submission of a project development report, representatives of the regional office of GSA in which the

project is proposed will consult with, and receive advice from, the regional office of HUD, and local planning and housing authorities concerning the present and planned availability of low- and moderate-income housing on a nondiscriminatory basis in the area where the project is to be located. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). A copy of the prospectus for each project which is authorized by the Committees on Public Works of the Congress in accordance with the requirements of section 7(a) of the Public Buildings Act of 1959, will be provided to HUD.

(2) When a site investigation for an authorized public buildings project is conducted by regional representatives of GSA to identify a site on which the public building will be constructed, a representative from the regional office of HUD will participate in the site investigation for the purposes of providing a report on the availability of low- and moderate-income housing on a nondiscriminatory basis in the area of the investigation. Such report will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a).

(d) Major lease actions having a significant socioeconomic impact on a community: At the time GSA and the agencies who will occupy the space have tentatively delineated the general area in which the leased space must be located in order that the agencies may effectively perform their missions and programs, the regional representative of HUD will be consulted by the regional representative of GSA who is responsible for the leasing action to obtain advice from HUD concerning the availability of low- and moderate-income housing on a nondiscriminatory basis to the delineated area. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). Copies of lease-construction prospectuses approved by the Committees on Public Works of the Congress in conformity with the provisions of the Independent Offices and Department of Housing and Urban Development appropriation acts, will be provided to HUD.

(e) GSA and HUD will each issue internal operating procedures to implement this memorandum of understanding within a reasonable time after its execution. These procedures shall recognize the right of HUD, in the event of a disagreement between HUD and GSA representatives at the area or regional level, to bring such disagreement to the attention of GSA officials at headquarters in sufficient time to assure full consideration of HUD's views, prior to the making of a determination by GSA.

(f) In the event a decision is made by GSA as to the location of a federally constructed building or leased space, and HUD has made findings, expressed in the advice given or a report made to GSA, that the availability to such location of low- and moderate-income housing on a nondiscriminatory basis is inadequate, the GSA shall provide the DHUD with a written explanation why the location was selected.

(g) Whenever the advice or report provided by HUD in accordance with paragraph 9(c)(1), 9(c)(2), or 9(d) with respect to an area or site indicates that the supply of low-and moderate-income housing on a nondiscriminatory basis is inadequate to meet the needs of the personnel of the agency involved, GSA and HUD will develop an affirmative action plan designed to insure that an adequate supply of such housing will be available before the building or space is to be occupied or within a period of 6 months thereafter. The plan should provide for commitments from the community involved to initiate and carry out all feasible efforts to obtain a sufficient quantity of low- and moderate-income housing available to the agency's personnel on a nondiscriminatory basis with adequate access to the location of the building or space. It should include commitments by the local officials having the authority to remove obstacles to the provision of such housing, when such obstacles exist, and to take effective steps to assure its provision. The plan should also set forth the steps proposed by the agency to develop and implement a counseling and referral service to seek out and assist its personnel to obtain such housing. As part of any plan during, as well as after its development, HUD agrees to give priority consideration to applications for assistance under its housing programs for the housing proposed to be provided in accordance with the plan.

10. This memorandum will be reviewed at the end of one year, and modified to incorporate any provision necessary to improve its effectiveness in light of actual experience.

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 the data required 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?

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 are excluded from reporting for the Annual Real Property Inventory?
102–84.50 May 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. 121(c)

SOURCE: 73 FR 2167, Jan. 14, 2008, 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 all Federal agencies must follow in preparing and submitting annual real property inventory information for real property owned, leased or otherwise managed by the United States. Detailed guidance implementing these policies is contained in the annual *Guidance for Real Property Inventory Reporting*, issued by the Federal Real Property Council and published by GSA.

§ 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) Promote efficient and economical use of Federal real property assets.

(b) Increase the level of agency accountability for asset management.

(c) Allow for comparing and benchmarking across various types of real property assets.

(d) Give decision makers the accurate, reliable data needed to make asset management decisions, including disposing of unneeded federal assets.

§ 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 (48 FR 13391, 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.

(c) Executive Order 13327, *Federal Real Property Asset Management*, dated February 4, 2004, requires that the Administrator of General Services, in consultation with the Federal Real Property Council, establish and maintain a single, comprehensive and descriptive database of all real property under the custody and control of all executive branch agencies, except when otherwise required for reasons of national security. The Executive Order authorizes the Administrator to collect from each Executive agency such descriptive information, except for classified information, as the Administrator considers will best describe the nature, use, and extent of the real property holdings of the Federal Government.

§ 102–84.20 Where should I obtain the data required 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 asset management and financial management records maintained by your agency.

§ 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 Government-wide 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.

§ 102–84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?

Yes. Your agency's official designated in accordance with § 102–84.25 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 has jurisdiction, custody, control, or otherwise manages Federal real property or enters into leases, is responsible for submitting the real property inventory information. Additional information on the responsibility for reporting inventory data is contained in the annual Guidance for Real Property Inventory Reporting.

§ 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, all real property leased by the United States from private individuals, organizations, and municipal, county, State, and foreign governments, and all real property otherwise managed by the United States where the ownership interest is held by a State or foreign government. Property to be reported includes, but is not limited to:

(a) Real property acquired by purchase, construction, donation, eminent domain proceedings, or any other method;

(b) 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;

(c) Buildings or other structures and facilities owned by or leased to the Government, whether or not located on Government-owned land;

(d) Excess and surplus real property;

(e) Leased real property (including leased land, leased buildings, leased other structures and facilities, or any combination thereof);

(f) Real property leased rent free or for a nominal rental rate, if the real property is considered significant by the reporting agency; and

(g) Real property where title is held by a State or foreign government, but rights for use have been granted to a Federal entity in an arrangement other than a leasehold.

§ 102–84.45 What types of real property are excluded from reporting for the Annual Real Property Inventory?

The following real property assets are excluded from Executive Order 13327 and reporting is optional:

(a) Land easements or rights-of-way held by the Federal Government.

(b) Public domain land (including lands withdrawn for military purposes) or land reserved or dedicated for national forest, national park, or national wildlife refuge purposes, except for improvements on those lands.

(c) Land held in trust or restricted-fee status for individual Indians or Indian tribes.

(d) Land, and interests in land, that are withheld from the scope of Executive Order 13327 by agency heads for reasons of national security, foreign policy or public safety.

§ 102–84.50 May the GSA Form 1166 be used to report information?

No. Agencies must submit information in accordance with the electronic format outlined in the annual reporting instructions by either submitting an XML file in a predetermined format or by entering the data manually into the online Federal Real Property Profile system. For more information on format requirements, or any other information and guidance on the Annual Real Property Inventory, contact

GSA's Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, or by telephone at (202) 501–0856.

§ 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 must be submitted electronically to the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, no later than December 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 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 common,'' 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.

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 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 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 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 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 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 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 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:

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 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.

PARTS 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 a U.S. Government bill of lading (GBL) to acquire freight, household goods or other related transportation services?
102–117.95 What transportation documents must I use to acquire freight, household goods or other related 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?

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 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 means charges that are applied to the base tariff rate or base contract of carriage rate. Examples of accessorial charges are:

(1) Bunkers, destination/delivery, container surcharges, and currency exchange for international shipments.

(2) Inside delivery, redelivery, re-consignment, and demurrage or detention for freight.

(3) Packing, unpacking, appliance servicing, blocking and bracing, and special handling for household goods.

Agency means an executive department or independent establishment in the executive branch of the Government, and a wholly owned Government corporation.

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.

Cargo preference is the legal requirement for all, or a portion of all, ocean-borne cargo to be transported on U.S. flag vessels.

Commuted 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, also referred to as the shipper, 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. It is also a penalty charge in some ocean shipping contracts of carriage that take effect after the demurrage time ends.

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 transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments.

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

problems. For further information on this council, see web site: *http://www.policyworks.gov/transportation*.

Hazardous material (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, 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, as amended at 75 FR 51393, Aug. 20, 2010]

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;

(3) Obtain assistance with loss and damage claims; and

(4) Use GSA's Transportation management and operations expertise.

(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 are in position to make volume or shipment commitments under a FAR contract;

(3) You do not want to pay for the GSA administrative service charge as a participant in the GSA rate tender programs; and

(4) Rates are not cost effective, as determined by the agency.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 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;

(c) Ensure the terms of the other agency's contract or rate tender allow you to use it; and

(d) Ensure that the agency offering this service has the authority or a delegation of authority from GSA to offer such services to your agency.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 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;

(2) Have recurring shipments between designated places, but do not expect sufficient volume to obtain favorable rates; or

(3) Do not have the manpower to monitor quality control and administer a contract.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 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;

(2) Have shipments recurring between designated places, but do not expect sufficient volume to obtain favorable rates; or

(3) Are not in a position to make a definite volume and shipment commitment under a FAR contract.

(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.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 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.

§ 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, Office of Travel and Transportation Services, Transportation Audit Division (QMCA), 2200 Crystal Drive, Room 300, Arlington, VA 22202, *http://www.gsa.gov/transaudits*.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 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 an electronic rate tender with your agency. Details of what must be included when submitting electronic tenders is located in § 102–118.260(b) of this subchapter.

(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, *www.gsa.gov/transaudits*.

[69 FR 57618, Sept. 24, 2004]

§ 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 or 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 GBL is used only for international shipments.

(c) A bill of lading, sometimes referred to as a commercial bill of lading, establishes the terms of contract between a shipper and TSP. It serves as a receipt of goods, a contract of carriage, and documentary evidence of title.

(d) 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'').

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51393, Aug. 20, 2010]

§ 102–117.90 May I use a U.S. Government bill of lading (GBL) to acquire freight, household goods or other related transportation services?

You may use the Government bill of lading (GBL) only for international shipments (including domestic offshore shipments).

[75 FR 31393, Aug. 20, 2010]

§ 102–117.95 What transportation documents must I use to acquire freight, household goods or other related transportation services?

(a) Bills of lading and purchase orders are the transportation documents you use to acquire freight, household goods shipments, and other transportation services. Terms and conditions in § 102–117.65 and the ''U.S. Government Freight Transportation Handbook'' are still required. For further information on payment methods, see part 102–118 of this chapter (41 CFR part 102–118).

(b) Government bills of lading (GBLs) are optional transportation documents for international shipments (including domestic offshore shipments).

[75 FR 31394, Aug. 20, 2010]

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 that provides satisfactory service with the best combination of service factors and price that meets the agency's requirements. A lower price may not be the best value if the service offered fails to meet the requirements of the shipment.

[75 FR 51394, Aug. 20, 2010]

§ 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 and past performance record with Government agencies;

(g) Capability of warehouse equipment and storage space;

(h) Experience of company, management, and personnel to perform the requirements;

(i) The TSP's safety record; and

(j) The TSP's loss and damage record, including claims resolution.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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. Surcharges such as fuel, currency exchange, war risk insurance, and other surcharges should also be factored into the costs.

[75 FR 51394, Aug. 20, 2010]

§ 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 Administration, Office of Cargo Preference, 1200 New Jersey Ave. SE., Washington, DC 20590, *http://marad.dot.gov/*. Tel. 1–800–987–3524. 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). They should be attached to the underlying ocean carrier bill of lading.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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, 1200 New Jersey Ave., SE., Washington, DC 20590, *http://marad.dot.gov/*. Tel. 1–800–987–3524. E-mail: *cargo.marad@dot.gov*.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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:

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign port, must travel in U.S. flag vessels that have a coastwise endorsement;

(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.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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 (800–987–3524 or *www.cargo.marad@dot.gov*), the U.S. Coast Guard or U.S. Customs Service for further information on exceptions to the coastwise laws.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

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.

§ 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, *www.gsa.gov/transaudits;* 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, as amended at 69 FR 57618, Sept. 24, 2004]

§ 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), you may, but are not required to, use the optional GBL;

(c) By ocean, use an ocean bill of lading, when suitable, along with the GBL. You only need an ocean bill of lading for door-to-door movements; and

(d) By air, use a bill of lading.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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:

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 (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 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.

(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 information on how to ship household goods, refer to the Federal Travel Regulation, 41 CFR part 302–7, Transportation and Temporary Storage of Household Goods and Professional Books, Papers, and Equipment (PBP&E).

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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.

§ 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 antitrust 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 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) Decisions on suspended or debarred TSPs do go beyond the agency and are available to the general public on the Excluded Parties Lists System (EPLS) maintained by GSA at *http://www.epls.gov*.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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 Whom must I notify on suspension or debarment of a TSP?

Agencies must report electronically any suspension or debarment actions to the Excluded Parties List System: *http://www.epls.gov* in accordance with the provisions of 48 CFR 9.404(c).

[75 FR 51394, Aug. 20, 2010]

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 the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration
Office of Travel, Transportation and Asset Management (MT)
1800 F Street, NW.
Washington, DC 20405

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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, Office of Travel and Transportation Services, Center for Transportation Management (QMCC), 2200 Crystal Drive, Rm. #3042, Arlington, VA 20406.

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

Subpart K—Reports

§ 102–117.345 Is there a requirement for me to report to GSA on my transportation activities?

(a) 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.

(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;

(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).

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51394, Aug. 20, 2010]

§ 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 to your agency with the requirement to report your transportation activity to GSA (see § 102–117.345).

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51395, Aug. 20, 2010]

§ 102–117.360 Where can I get more information about the GTPC?

For more information about the GTPC, contact:

General Services Administration
Office of Travel, Transportation and Asset Management (MT)
1800 F Street, NW.
Washington, DC 20405
http://www.policyworks.gov/transportation

[65 FR 60061, Oct. 6, 2000, as amended at 75 FR 51395, Aug. 20, 2010]

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?
102–118.91 May my agency authorize the use of cash?
102–118.92 How does my agency handle receipts, tickets or other records of cash payments?
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)

102–118.185 When buying freight transportation, must my agency reference the applicable contract or tender on the bill of lading (including GBLs)?
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 a subcontractor or 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?

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?
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 Civilian Board of Contract Appeals (CBCA)?
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 CBCA?
102–118.590 May my agency appeal a prepayment audit decision of the GSA Audit Division?
102–118.595 May my agency appeal a prepayment audit decision by the CBCA?

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 CBCA?
102–118.660 May a TSP appeal a postpayment audit decision of the CBCA?
102–118.665 May my agency appeal a postpayment audit decision by the CBCA?

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 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.

DEFINITIONS

§ 102–118.35 What definitions apply to this part?

The following definitions apply to this part:

Agency, as used in this part, means a department, agency, or instrumentality of the United States Government.

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.

Cash means cash, personal checks, personal charge cards, and travelers checks. Cash may only be used to pay for transportation expenses in extremely limited cases where government payment mechanisms are not available or acceptable.

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 information 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) is the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments.

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 (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.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57618, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

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., packaging, storage) with a Government contractor-

issued charge card, purchase order (or electronic equivalent), or a Government bill of lading for international shipments (including domestic overseas shipments). In extremely limited cases, cash can be used where government payment mechanisms are not available or acceptable.

(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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 66 FR 48812, Sept. 24, 2001; 69 FR 57618, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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, (iv) Government Transportation Request.	(2) Bill from TSP (may be electronic).
(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)*. 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 must use electronic commerce in all areas of your transportation program. This includes the use of electronic systems and forms for ordering, receiving bills and paying for transportation and transportation services.

[69 FR 57618, Sept. 24, 2004]

§ 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).

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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.

§ 102–118.91 May my agency authorize the use of cash?

Yes, in limited circumstances, a Government employee can use cash where government payment mechanisms are not available or acceptable.

[69 FR 57618, Sept. 24, 2004]

§ 102–118.92 How does my agency handle receipts, tickets or other records of cash payments?

Your agency must ensure that its employees keep the original receipts for transportation purchases over $75.00 made with cash. If it is impractical to furnish receipts in any instance as required by this subtitle, the failure to do so must be fully explained on the travel voucher. Mere inconvenience in the matter of taking receipts will not be considered. These receipts must be saved for a possible postpayment audit by the GSA Audit Division. If your agency requires the filing of paper receipts, then you must do so. For transportation purchases over $75.00, your agency must ensure that copies of all original papers are retained at your agency. Copies of tickets from a TSP must be sent to—General Services Administration, Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202, *www.gsa.gov/transaudits*.

[69 FR 57618, Sept. 24, 2004, as amended at 74 FR 30475, June 26, 2009]

§ 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, Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202, *www.gsa.gov/transaudits*.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004: 74 FR 30475, June 26, 2009]

§ 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 and approved by the agency, the TSP may not demand prepayment or collect charges from the consignee. The TSP, providing service under the bill of lading, must present a legible copy of the bill of lading or an original, properly certified GBL attached to Standard Form (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.''

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57619, Sept. 24, 2004]

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

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)

§ 102–118.185 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).

§ 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 a subcontractor or 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:

General Services Administration
Federal Acquisition Service
Inventory Management Branch (QSDACDB–WS)
819 Taylor Street, Room 6A00
Fort Worth, TX 76102

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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 Acquisition Service
Inventory Management Branch (QSDACDB–WS)
819 Taylor Street, Room 6A00

Fort Worth, TX 76102

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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 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, Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202, *www.gsa.gov/transaudits*.

(b) Tenders must be submitted electronically, following the instructions provided by the requesting agency. The following information must be submitted with the tender:

(1) Issuing TSP, Bureau, Agency or Conference.

(2) Tender number.

(3) Standard Carrier Alpha Code (SCAC).

(4) TSP Tax Identification Number (TIN).

(5) Issue date.

(6) Effective date.

(7) Expiration date.

(8) Origin and destination.

(9) Freight Classification and/or commodity description (including origin and destination).

(10) Rate or charge for line haul rates.

(11) Minimum weights.

(12) Route(s).

(13) Accessorial services description(s) with rate or charge and governing publication.

(14) TSP operating authority.

(c) The TSP must include a statement that the TSP will adhere and agree to the following general terms and conditions. The services provided in this tender will be performed in accordance with applicable Federal, State and municipal laws and regulations, including Federal Management Regulation parts 102–117 and 102–118 (41 CFR parts 102–117 and 102–118), and the TSP(s) hold(s) the required operating authority to transport the commodity from, to, or between the places specified in the authorized certificates, permits or temporary operating authorities.

(d) The TSP shall bill the United States Government on Standard Form (SF) 1113, Public Voucher for Transportation Charges, appropriately completed and supported. The TSP(s) will send bills to the ''Bill Charges To'' address on the face of the bill of lading or agency-ordering document.

(e) The Optional Form (OF) 280, Uniform Tender of Rates and/or Charges for Transportation Services, includes all the provisions of paragraph (c) of this section and is another option to file a tender with the Government.

[69 FR 57619, Sept. 24, 2004, as amended at 74 FR 30475, June 26, 2009]

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?

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 Travel, Transportation and Asset Management (MT), 1800 F Street, NW., Washington, DC 20405.

[74 FR 30476, June 26, 2009]

§ 102–118.275 What must my agency consider when designing and implementing a prepayment audit program?

(a) 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. Each method of ordering transportation and transportation services may require a different kind of prepayment audit.

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.

(b) For transportation payments made through cost reimbursable contracts, the agency must include a statement in the contract that the contractor shall submit to the address identified for prepayment audit, transportation documents which show that the United States will assume freight charges that were paid by the contractor.

(c) Cost reimbursable contractors shall only submit for audit bills of lading with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the contractor and made available for on-site audits.

[69 FR 57619, Sept. 24, 2004]

§ 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 U.S. Government Accountability Office Policy and Procedures Manual Chapter 7, obtainable from:

U.S. Government Accountability Office
P.O. Box 6015
Gaithersburg, MD 20884–6015
http://www.gao.gov

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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, Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202, *www.gsa.gov/transaudits*.

(b) The GSA Audit Division will review the appeal of an agency's final, full or partial denial of a claim and issue a decision. A TSP must submit claims within 3 years under the guidelines established in § 102–118.460.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

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.

§ 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, if directed by GSA's Audit Division, 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).

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57619, Sept. 24, 2004]

§ 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, Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202, *www.gsa.gov/transaudits*.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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 prepayment 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 Travel, Transportation and Asset Management (MT)
1800 F Street, NW.
Washington, DC 20405

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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 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 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 Government'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 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 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).
(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?

Statutory time limits vary depending on the mode and the service involved and may involve freight charges. The following tables list the time limits:

(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.

(A) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPS—Continued

Mode	Freight charges	Reparations	Loss and damage
(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
www.gsa.gov/transaudits

(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.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004]

§ 102–118.495 May my agency appeal a decision by the Civilian Board of Contract Appeals (CBCA)?

No, your agency may not appeal a decision made by the CBCA.

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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
www.gsa.gov/transaudits

(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.

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004]

§ 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;

(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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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 information 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 Civilian Board of Contract Appeals (CBCA) under guidelines established in this subpart F, or file a claim with the United States Court of Federal Claims. The TSP's request for review must be received by the CBCA 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:

(1) By United States Postal Service to: Civilian Board of Contract Appeals (CBCA), 1800 F Street, NW., Washington, DC 20405.

(2) In person or by courier to: Civilian Board of Contract Appeals, 6th floor, 1800 M Street, NW., Washington, DC 20036.

(b) The CBCA will accept legible submissions via facsimile (FAX) on (202) 606–0019.

[74 FR 30476, June 26, 2009]

§ 102–118.585 May a TSP appeal a prepayment audit decision of the CBCA?

No, a ruling by the CBCA 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.

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 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 CBCA?

No, your agency may not appeal a prepayment audit decision. Your agency must follow the ruling of the CBCA.

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202
www.gsa.gov/transaudits

NOTE TO § 102–118.630: Amounts collected by GSA are returned to the Treasurer of the United States (31 U.S.C. 3726).

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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.

§ 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
Transportation Audit Division (QMCA)
Crystal Plaza 4, Room 300
2200 Crystal Drive
Arlington, VA 22202

www.gsa.gov/transaudits

[65 FR 24569, Apr. 26, 2000, as amended at 69 FR 57620, Sept. 24, 2004; 74 FR 30475, June 26, 2009]

§ 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 Civilian Board of Contract Appeals (CBCA) or file a claim with the United States Court of Federal Claims (28 U.S.C. 1491).

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 102–118.655 Are there time limits on a TSP request for an administrative review by the CBCA?

(a) Yes, the CBCA 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. Address requests:

(1) By United States Postal Service to: Civilian Board of Contract Appeals (CBCA), 1800 F Street, NW., Washington, DC 20405.

(2) In person or by courier to: GSA Civilian Board of Contract Appeals, 6th floor, 1800 M Street, NW., Washington, DC 20036.

(b) The CBCA will accept legible submissions via facsimile (FAX) on (202) 606–0019.

[74 FR 30746, June 26, 2009]

§ 102–118.660 May a TSP appeal a postpayment audit decision of the CBCA?

No, a ruling by the CBCA 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.

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

§ 102–118.665 May my agency appeal a postpayment audit decision by the CBCA?

No, your agency may not appeal a postpayment audit decision and must follow the ruling of the CBCA.

[65 FR 24569, Apr. 26, 2000, as amended at 74 FR 30476, June 26, 2009]

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 [RESERVED]

PART 102–141—GENERAL [RESERVED]

PARTS 102–142—102–170 [RESERVED]

SUBCHAPTER F—TELECOMMUNICATIONS

PART 102–171—GENERAL [RESERVED]

PART 102–172—TELECOMMUNICATIONS MANAGEMENT POLICY [RESERVED]

PART 102–173—INTERNET GOV DOMAIN

Subpart A—General

Sec.

102–173.5 What is Internet GOV Domain?

102–173.10 What is the authority or jurisdiction of the Internet GOV Domain?

102–173.15 What is the scope of this part?

102–173.20 To whom does this part apply?

102–173.25 What definitions apply to this part?

Subpart B—Registration

102–173.30 Who may register in the dot-gov domain?

102–173.35 Who authorizes domain names?

102–173.40 Who is my Chief Information Officer (CIO)?

102–173.45 Is there a registration charge for domain names?

102–173.50 What is the naming convention for States?

102–173.55 What is the naming convention for Cities and Townships?

102–173.60 What is the naming convention for Counties or Parishes?

102–173.65 What is the naming convention for Native Sovereign Nations?

102–173.70 Where do I register my dot-gov domain name?

102–173.75 How long does the process take?

102–173.80 How will I know if my request is approved?

102–173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?

102–173.90 Are there any special restrictions on the use and registration canonical, or category names like recreation.gov?

102–173.95 Are there any restrictions on the use of the dot-gov domain name?

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

SOURCE: 68 FR 15090, Mar. 28, 2003, unless otherwise noted.

Subpart A—General

§ 102–173.5 What is Internet GOV Domain?

Internet GOV Domain refers to the Internet top-level domain ''dot-gov'' operated by the General Services Administration for the registration of U.S. government-related domain names. In general, these names reflect the organization names in the Federal Government and non-Federal government entities in the United States. These names are now being used to promote government services and increase the ease of finding these services.

§ 102–173.10 What is the authority or jurisdiction of the Internet GOV Domain?

Jurisdiction of the Internet GOV (dot-gov) domain was delegated to the General Services Administration in 1997 by the Federal Networking Council with guidance in the form of Internet Engineering Task Force (IETF) Informational RFC 2146, which can be obtained on the Internet at: *http://www.ietf.org/rfc/rfc2146.txt?number=2146*.

§ 102–173.15 What is the scope of this part?

This part addresses the registration of second-level domain names used in the Internet GOV Domain. This registration process assures that the assigned domain names are unique worldwide.

§ 102–173.20 To whom does this part apply?

This part applies to Federal, State, and local governments, and Native Sovereign Nations. You do not need to register domain names with the General Services Administration if you will be using some other top-level domain registration, such as dot-us, dot-org, or dot-net.

§ 102–173.25 What definitions apply to this part?

The following definitions apply to this part:

Domain is a region of jurisdiction on the Internet for naming assignment.

The General Services Administration (GSA) is responsible for registrations in the dot-gov domain.

Domain name is a name assigned to an Internet server. This is the name that you request from GSA. Typically, you would apply this name to a domain name server. A domain name locates the organization or other entity on the Internet. The dot gov part of the domain name reflects the purpose of the organization or entity. This part is called the Top-Level Domain name. The Second-Level Domain name to the left of the dot gov maps to a readable version of the Internet address. The Domain Name server has a registry of Internet Protocol (IP) address numbers that relate to the readable text name.

Domain name server is the computer that provides pointers from the domain name to the actual computers.

Dot-gov refers to domain names ending with a ''.gov'' suffix. The Internet GOV domain is another way of expressing the collection of dot-gov domain names.

Native Sovereign Nations (NSN) are federally recognized tribes.

Subpart B—Registration

§ 102–173.30 Who may register in the dot-gov domain?

Registration in the dot-gov domain is available to official governmental organizations in the United States including Federal, State, and local governments, and Native Sovereign Nations.

§ 102–173.35 Who authorizes domain names?

Domain names must be authorized by the Chief Information Officer (CIO) of the requesting or sponsoring governmental organization. For Federal departments and agencies, the General Services Administration (GSA) will accept authorization from the CIO of the department or agency. For independent Federal government agencies, boards, and commissions, GSA will accept authorization from the highest-ranking Information Technology Official. For State and local governments, GSA will accept authorization from appropriate State or local officials, see § 102–173.40.

For Native Sovereign Nations, GSA will only accept authorization from the Bureau of Indian Affairs, Department of the Interior. In most cases, GSA will not make determinations on the appropriateness of the selected domain names, but reserves the right to not assign domain names on a case-by-case basis. Non-Federal government domain names must follow the naming conventions described in §§ 102–173.50 through 102–173.65. For other government entities, CIO's may delegate this authority by notification to GSA.

§ 102–173.40 Who is my Chief Information Officer (CIO)?

Your Chief Information Officer (CIO) may vary according to the branch of government. For the Federal Government, the General Services Administration (GSA) recognizes the cabinet level CIOs listed at *http://www.cio.gov*. For States, GSA will accept authorization from the Office of the Governor or highest-ranking Information Technology (IT) official. Other officials include the Mayor (for city or town), County Commissioner (for counties) or highest ranking IT official. Native Sovereign Nations (NSN) must receive authorization from the Bureau of Indian Affairs. CIOs may delegate this authority by notification to GSA.

§ 102–173.45 Is there a registration charge for domain names?

The General Services Administration (GSA) reserves the right to charge for domain names in order to recover cost of operations. For current registration charges, please visit the GSA Web site at *http://www.nic.gov*. GSA does not currently charge a fee. GSA has the authority to employ a system of collection that includes a one-time setup fee for new registrations, which will not exceed $1000, depending on the level of assistance that may be provided by GSA, and a recurring annual charge that will not exceed $500 for all dot-gov domains. The fees are based on anticipated costs for operating the registration service.

§ 102–173.50 What is the naming convention for States?

(a) To register any second-level domain within dot-gov, State government

entities must register the full State name or clearly indicate the State postal code within the name. Examples of acceptable names include virginia.gov, tennesseeanytime.gov, wa.gov, nmparks.gov, mysc.gov, emaryland.gov, and ne-taxes.gov. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code. For example, Indiana (IN) should not register for win.gov, or independence.gov; and

(2) Where potential conflicts arise between postal codes and existing domain names, States are encouraged to register URL's that contain the full State name.

(b) There is no limit to the number of domain names for which a State may register.

(c) States are encouraged to make second-level domains available for third-level registration by local governments and State Government departments and programs. For example, the State of North Carolina could register NC.GOV as a second-level domain and develop a system of registration for their local governments. The State would be free to develop policy on how the local government should be registered under NC.GOV. One possibility might be to spell out the city, thus Raleigh.NC.gov could be a resulting domain name.

§ 102–173.55 What is the naming convention for Cities and Townships?

(a) To register any second-level domain within dot-gov, City (town) governments must register the domain name with the city (town) name or abbreviation, and clear reference to the State in which the city (town) is located. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code; and

(2) Inclusion of the word city or town within the domain name is optional and may be used at the discretion of the local government.

(b)(1) The preferred format for city governments is to denote the State postal code after the city name, optionally separated by a dash. Examples of preferred domain names include—

(i) Chicago-il.gov;

(ii) Cityofcharleston-sc.gov;

(iii) Charleston-wv.gov;

(iv) Townofdumfries-va.gov; and

(v) Detroitmi.gov.

(2) GSA reserves the right to make exceptions to the naming conventions described in this subpart on a case-by-case basis in unique and compelling cases.

(c) If third-level domain naming is used, GSA reserves the right to offer exceptions to the third-level domain naming conventions described in this section on a case-by-case basis in unique and compelling cases.

§ 102–173.60 What is the naming convention for Counties or Parishes?

(a) To register any second-level domain within dot-gov, County or Parish governments must register the County's or Parish's name or abbreviation, the word ''county'' or ''parish'' (because many counties have the same name as cities within the same State), and a reference to the State in which the county or parish is located. However, the use of the State postal code should not be embedded within a single word in a way that obscures the postal code.

(b) The preferred format for county or parish governments is to denote the State postal code after the county or parish, optionally separated by a dash. Examples of preferred domain names include—

(1) Richmondcounty-ga.gov;

(2) Pwc-county-va.gov; and

(3) Countyofdorchestor-sc.gov.

(c) If third-level domain naming is available from the State government, counties or parishes are encouraged to register for a domain name under a State's registered second-level (e.g., richmondcounty.ga.gov).

§ 102–173.65 What is the naming convention for Native Sovereign Nations?

To register any second-level domain in dot-gov, Native Sovereign Nations (NSN) may register any second-level domain name provided that it contains the registering NSN name followed by

a suffix of ''-NSN.gov'' (case insensitive).

§ 102–173.70 Where do I register my dot-gov domain name?

Registration is an online process at the General Services Administration's Web site at *http://www.nic.gov*. At the Network Information Site, you will find the instructions and online registration forms for registering your domain name. To register your domain name you will need to provide information such as your desired domain name, sponsoring organization, points of contact, and at least two name server addresses.

§ 102–173.75 How long does the process take?

The process can be completed within 48 hours if all information received is complete and accurate. Most requests take up to thirty (30) days because the registrar is waiting for Chief Information Officer (CIO) approval.

§ 102–173.80 How will I know if my request is approved?

A registration confirmation notice is sent within one business day after you register your domain name, informing you that your registration information was received. If all of your information is accurate and complete, a second notice will be sent to you within one business day, informing you that all of your information is in order. If you are ineligible, or if the information provided is incorrect or incomplete, your registration will be rejected and a notice will be sent to you stating the reason for rejection. Registration requests will be activated within two business days after receiving valid authorization from the appropriate Chief Information Officer (CIO). Once your domain name has been activated, a notice will be sent to you.

§ 102–173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?

Registrations will be held in reserve status for sixty (60) days pending Chief Information Officer (CIO) authorization from your sponsoring organization.

§ 102–173.90 Are there any special restrictions on the use and registration of canonical, or category names like recreation.gov?

Yes, canonical names registration request must provide access coverage for the areas conveyed by the name. So the URL recreation.gov would not be approved for the state of Maryland, but the URL recreationMD.gov would be approved if it provides statewide coverage. The logic of the names adds value to the dot gov domain. GSA reserves the right deny use of canonical names that do not provide appropriate coverage and to arbitrate these issues.

§ 102–173.95 Are there any restrictions on the use of the dot-gov domain name?

The General Services Administration approves domain names for a specific term of time, generally two years unless otherwise stated, and under conditions of use. General conditions of registration and are posted at the registration Web site at *http://www.nic.gov* and may be modified over time. Organizations that operate web sites that are not in compliance with the conditions of use may have their domain name terminated.

PARTS 102–174—102–190 [RESERVED]

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

PART 102–191—GENERAL [RESERVED]

PART 102–192—MAIL MANAGEMENT

Subpart A—Introduction to this Part

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 we obtain more information about the classes of mail?
102–192.45 How can we request a deviation from these requirements, and who can approve it?

Subpart B—Financial Requirements for All Agencies

102.192.50 What payment processes are we required to use?
102–192.55 Why must we use these commercial payment processes?
102–192.60 How do we implement these commercial payment processes?
102–192.65 What features must our finance systems have to track mail costs?

Subpart C—Security Requirements for All Agencies

102–192.70 What security policies and plans must we have?
102–192.75 Why must we have written security policies and plans?
102–192.80 How do we develop written security policies and plans?

Subpart D—Reporting Requirements

102.192.85 Who must report to GSA annually?
102.192.90 What must we include in our annual mail management report to GSA?
102–192.95 Why does GSA require annual mail management reports?
102–192.100 How do we submit our annual mail management report to GSA?
102–192.105 When must we submit our annual mail management report to GSA?

Subpart E—Performance Measurement Requirements

102–192.110 At what level(s) in our agency must we have performance measures?
102–192.115 Why must we use performance measures?

Subpart F—Agency Mail Manager Requirements

102–192.120 Must we have an agency mail manager?
102.192.125 What is the appropriate managerial level for an agency mail manager?
102–192.130 What are your general responsibilities as an agency mail manager?

Subpart G—Mail Center Manager Requirements

102–192.135 Must we have a mail center manager at our facility?
102.192.140 What are your general responsibilities as a Federal mail center manager?

Subpart H—Program Level Mail Responsibilities

102–192.145 Which program levels should have a mail manager?
102–192.150 What are your general responsibilities as a program level mail manager?

Subpart I—Other Agency Responsibilities

102–192.155 What should our agency-wide mail management policy statement cover?
102–192.160 What less costly alternatives to expedited mail and couriers should your agency-wide mail management policy address?
102–192.165 What authorities must I follow when contracting out all or part of the mail function?

Subpart J—GSA's Responsibilities and Services

102–192.170 What are GSA's responsibilities in mail management?
102–192.175 What types of support does GSA offer to Federal agency mail management programs?

AUTHORITY: 44 U.S.C. 2904; 40 U.S.C. 121(c).

SOURCE: 73 FR 49956, Aug. 25, 2008, unless otherwise noted.

Subpart A—Introduction to this Part

§ 102–192.5 What does this part cover?

This part prescribes policy and requirements for the effective, economical, and secure management of incoming, internal, and outgoing mail in Federal agencies.

§ 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, that 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 the General Services Administration (GSA) recommends.

NOTE TO § 102–192.20: In their internal policy statements, agencies may require steps that GSA recommends. However, agencies may not change required steps into non-mandatory recommendations.

§ 102–192.25 Does this part apply to me?

Yes, this part applies to you if you work in mail management in a Federal agency, as defined in § 102–192.35.

§ 102–192.30 What types of mail does this part apply to?

(a) This part applies to all materials that might pass through a Federal mail center, including—

(1) All internal, incoming, and outgoing materials, regardless of whether or not they currently pass through a mail center; this includes envelopes, publications, postal cards, bulk mail, expedited mail, and individual packages up to 70 pounds that contain paper or publications; and

(2) Materials carried by agency personnel, contractors, the United States Postal Service (USPS), and all other carriers of such items.

(b) This part does not apply to shipments of parts or supplies from a materiel distribution center (a material distribution center is a warehouse that maintains and distributes an inventory of parts and supplies).

§ 102–192.35 What definitions apply to this part?

The following definitions apply to this part:

Accountable mail means any mail for which the service provider and the mail center must maintain a record that shows where the mail piece is at any given time and when and where it was delivered; examples include USPS registered mail and all expedited mail (see definition below).

Agency mail manager means the person who manages the overall mail communications program of a Federal agency.

Class of mail means one of the five 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.

(2) First class (includes priority mail).

(3) Periodicals.

(4) Standard mail (e.g., bulk marketing mail).

(5) Package services.

Commingling means combining outgoing mail from one facility or agency with outgoing mail from at least one other source.

Commercial payment processes means mechanisms for paying for USPS postage that are essentially the same as those used by private sector mailers. This means paying for postage before the postage is used (which the U.S. Treasury has determined is appropriate

for USPS postage). For meter or permit mail, this also means sending money to the USPS via Electronic Funds Transfer (EFT) transactions to commercial banks designated by the USPS as their financial agents. For stamps and other USPS services, this means paying the USPS directly via cash, charge card, debit card, and money order, depending on the specific service being purchased.

Expedited mail 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.

Federal agency (or agency), as defined in 44 U.S.C. 2901(14), 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.

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 or no Federal employees are involved in processing the mail.

Incoming mail means any mail that comes into a facility delivered by any service provider, such as the USPS, United Parcel Service (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.

Large agency means a Federal agency whose total payments to all mail service providers exceed $1 million per fiscal year.

Mail means the types of mail described in § 102–192.30.

Mail center means an organization and/or place, within or associated with a Federal facility, where incoming and/or outgoing Federal mail is processed.

Mail costs means direct or allocated 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 so that they can be processed efficiently and effectively by automated mail-processing equipment.

Official Mail Accounting System (OMAS) means the U.S. Postal Service's government-specific system used to track postage used by many Federal agencies.

Outgoing mail means mail generated within a Federal facility that is going outside that facility and is delivered by a service provider.

Personal mail means incoming or outgoing mail that is not related to official business of the Federal government.

Postage means money due or paid to any service provider for the delivery of mail.

Presort means a mail preparation process 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 (''significant'' in this context is relative to the overall size of the agency's mail budget; half of a small annual mail budget may not be significant in a small agency, whereas one-tenth or less might be significant in a large agency). The term program level may apply to an agency organizational entity, program, or project.

Program level mail manager is the person at the program level responsible for mail policy implementation, operations, and financial management; the program level counterpart of the agency mail manager.

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 Department of State's 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, 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 ways of processing outgoing mail that qualify for reduced postage rates; examples include presorting, bar coding, consolidating, and commingling.

§ 102–192.40 Where can we obtain more information about the classes of mail?

You can learn more about mail classes in the Domestic Mail Manual (DMM). The DMM is available online at *http://pe.usps.gov/default.asp* or you can order a copy from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

§ 102–192.45 How can 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. The authority rests with the Administrator of General Services and those to whom the Administrator has delegated such authority.

Subpart B—Financial Requirements for All Agencies

§ 102–192.50 What payment processes are we required to use?

All payments to the United States Postal Service or authorized service providers must be made using commercial payment processes.

(a) Agencies may no longer use the Intergovernmental Payment and Collection Payment (IPAC) process associated with the Official Mail Accounting System (OMAS), except where GSA has approved a temporary deviation for a specific agency, office, or component.

(b) Any deviation related to the requirements of this section that has not reached its expiration date on the effective date of this rule will continue in effect until it expires.

(c) Any new deviation request, or any request to extend an existing deviation, must include a plan for the agency to implement an accountable system for postage, as discussed in § 102–192.65.

(d) GSA provides detailed guidance on commercial payment processes and accountability on its web site, *www.gsa.gov/mailpolicy*.

§ 102–192.55 Why must we use these commercial payment processes?

Federal agencies are required to use commercial payment processes because commercial payment requires obligation of the money before the postage is used (by contrast, use of the OMAS system allows the postage use and the obligation of funds to occur almost entirely independently of each other). Requiring the program level manager who generates the mail to obligate the money before the postage is used makes it much more likely that the same program level manager will be accountable for the money, thereby encouraging good judgment in using postage.

§ 102–192.60 How do we implement these commercial payment processes?

Guidance on implementing a compliant payment process is in the GSA Policy Advisory, Guidelines for Federal Agencies On Converting to Commercial Payment Systems for Postage, which can be found at *www.gsa.gov/mailpolicy*.

§ 102–192.65 What features must our finance systems have to keep track of mail costs?

All agencies must have an accountable system for making postage payments; that is, a system that allocates postage expenses at the program level within the agency and then makes program level managers accountable for obligating and tracking those expenses.

The agency will have to determine the appropriate program level for this requirement, because the level at which it is cost-beneficial differs widely. The agency's finance system(s) should track all mail costs separately to the program level or below, and 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) Allow mail centers to establish systems to charge their customers for mail costs; and

(c) Identify and charge mail costs that are part of printing contracts to the program level.

NOTE TO § 102–192.65: To better accomplish these goals listed in this section, you should maintain separate accounts with the USPS and all other service providers for mail, as defined by this part. Shipment of non-mail items should be arranged and paid for through other accounts. This will make it possible for your annual mail management report to reflect only amounts paid for mail, as defined in § 102–192.35.

Subpart C—Security Requirements for All Agencies

§ 102–192.70 What security policies and plans must we have?

(a) You must have a written mail security policy that applies throughout the agency.

(b) You also must have a written mail security plan for each facility that processes mail, regardless of the facility's mail volume.

(c) If a contract that is in place on August 25, 2008 does not fully meet the requirements of this section, the contract must be modified to meet the requirement for a security plan within one year of August 25, 2008, unless the contract will expire prior to that date.

(d) The scope and level of detail of each facility mail security plan should be commensurate with the size and responsibilities of each facility. For small facilities, you may provide a general, standardized plan that is used in many similar locations. For larger locations, you must develop a plan that is specifically tailored to the threats and risks at your location. Agencies are free to determine for themselves which facilities are ''smaller'' and which are ''larger'' for the purposes of this section, so long as the basic requirement for a security plan is met at every facility.

(e) All mail facility managers should report annually the status of their facility mail security plans to agency headquarters. At a minimum, this report should assure that the facility mail security plan complies with the requirements of this part, including annual review by a subject matter expert and regular rehearsal of responses to various emergency situations by facility personnel.

(f) An outside security professional who has expertise in mail center security should review the agency's mail security plan annually. Review of facility mail security plans can be accomplished by outside subject matter experts such as agency security personnel. If these experts are not available within your agency, seek assistance from the Postal Inspection Service or other Federal authorities.

§ 102–192.75 Why must we have written security policies and plans?

All Federal mail programs must identify, prioritize, and coordinate the protection of all mail processing facilities in order to prevent, deter, and mitigate the effects of deliberate efforts to destroy, incapacitate, or exploit the mail center or the national mail infrastructure. Homeland Security Presidential Directive HSPD–7 requires all agencies to protect key resources from terrorist attacks, and this is spelled out in the Postal and Shipping Sector Plan, which is part of the National Infrastructure Protection Plan (NIPP) prescribed by HSPD–7. All Federal mail centers are key resources under that plan. Details on the Postal and Shipping Sector Plan are not publicly available. Federal employees needing access to the plan should contact the Department of Homeland Security (DHS) at NIPP@dhs.gov.

§ 102–192.80 How do we develop written security policies and plans?

Agency mail managers must coordinate with their agency security service and/or the Federal Protective Service

to develop agency mail security policies and plans. The Federal Protective Service has, working with the Interagency Security Committee which it chairs, developed standards for building construction and management, including standards for mail centers. At a minimum, the agency mail security plan must address the following topics—

(a) Risk assessment;

(b) Plan to protect staff and all other occupants of agency facilities from hazards that might be delivered in the mail;

(c) Operating procedures;

(d) Plan to provide a visible mail screening operation;

(e) Training mail center personnel;

(f) Testing and rehearsing responses to various emergency situations by agency personnel;

(g) Managing threats;

(h) Communications plan;

(i) Occupant Emergency Plan (OEP);

(j) Continuity of Operations Plan (COOP); and

(k) Annual reviews.

NOTE TO § 102–192.80: The agency mail manager and facility manager(s) need not prepare all of these plans themselves. They should participate actively in the development and implementation of each of these elements, but other parts of the agency or outside security professionals should take the lead in their respective areas of expertise.

Subpart D—Reporting Requirements

§ 102–192.85 Who must report to GSA annually?

Large agencies (all agencies that spend in excess of $1 million each fiscal year in total payments to mail service providers) must provide a Mail Management Report to GSA by January 15th of each year. If your agency is a cabinet-level or independent agency, the agency mail manager must compile all offices (or components) and submit one report for the department or agency as a whole (e.g., the Department of Defense or the Department of Health and Human Services).

§ 102–192.90 What must we include in our annual mail management report to GSA?

Your annual report must—

(a) Identify your agency mail manager; in addition you must promptly report the name of the agency mail manager whenever there is a change of the person serving in this role.

(b) State the total amounts paid to each service provider during the previous fiscal year:

(1) These amounts should include only amounts paid for mail; not amounts paid to any service provider to ship parts and supplies from a materiel distribution center (see the definition of mail in § 102–192.30).

(2) These amounts should include all postage costs associated with mailing printed materials, regardless of whether the printing is accomplished by the agency or a contractor, and regardless of how the postage expense is paid (e.g., GSA's Federal Acquisition Service (FAS) produces a publication called ''Marketips,'' which provides information about supplies and services available through GSA sources. GSA should include the postage that it uses to mail Marketips in the amounts that it reports, even though a printing company actually prints and mails the publication);

(c) Report actual results for the performance measures in use at the agency and facility levels;

(d) Describe your agency's accomplishments and plans to improve the economy and efficiency of mail operations in the current and future years;

(e) Identify how many Federal employees and contractors work in your agency's mail operations nationwide, and the number that have achieved industry certifications (e.g. Certified Mail and Distributions Systems Manager, Executive Mail Center Manager, Mailpiece Quality Control Specialist, Certified Mail Manager);

(f) Describe your agency's approach to ensuring that program level officials are accountable for postage; and

(g) Verify that a competent expert has reviewed your agency security policies and the mail security plan for each facility within the past year, or explain what steps your agency has taken in this regard.

NOTE TO §102–192.90: GSA is launching a long-term initiative to improve the usefulness of data collected through the annual mail management reports. The reports for each succeeding fiscal year will require an incrementally broader set of data, working towards measures that will give agency management a much clearer picture of the efficiency and effectiveness of their mail programs. The additional data will eventually require agencies to track cost per piece for all outgoing Federal mail.

§ 102–192.95 Why does GSA require annual mail management reports?

GSA requires annual agency mail management reports to—

(a) Ensure that Federal agencies have the policies, procedures, and data to manage their mail 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 best practices, training, standards, and guidelines.

§ 102–192.100 How do we submit our annual mail management report to GSA?

If your agency is a large agency, as defined in §102–192.35, you must submit annual reports using the GSA web-based Electronic Performance Support Tool (EPST). Agency mail managers and other authorized users will receive training from GSA on how to use the EPST.

§ 102–192.105 When must we submit our annual mail management report to GSA?

Beginning with the report covering Fiscal Year 2009, your annual report will be due on January 15th of each year for the previous fiscal year.

Subpart E—Performance Measurement Requirements

§ 102–192.110 At what level(s) in our agency must we have performance measures?

You must have performance measures for mail operations at the agency level and in all facilities and for all program levels that spend more than $1 million per year on postage. GSA provides a list of suggested performance measures, as part of the format for the annual report. You may also find these measures on GSA's web site, at *www.gsa.gov/mailpolicy*.

§ 102–192.115 Why must we use performance measures?

Performance measures gauge the success of your mail management plans and processes by comparing performance over time and among organizations. Performance measures—

(a) Help define goals and objectives;

(b) Enhance resource allocation; and

(c) Provide accountability.

Subpart F—Agency Mail Manager Requirements

§ 102–192.120 Must we have an agency mail manager?

Yes, every Federal agency as defined in §102–192.35 must have an agency mail manager. Agencies that are not ''large agencies'' as defined in §102–192.35 may not need a full-time person in this position.

NOTE TO §102–192.120: GSA will post the names and official contact information for all large agency mail managers on its web site located at *www.gsa.gov/mailpolicy*.

§ 102–192.125 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 speak for the agency and fulfill the requirements of Subparts B, C, D, E, and F of this part. GSA recommends professional mail certification for agency mail managers.

§ 102–192.130 What are your general responsibilities as an agency mail manager?

In addition to carrying out the responsibilities in Subparts B, C, D, and E of this part, 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) Set policies for expedited mail, mass mailings, mailing lists, and couriers;

(d) Seek opportunities to implement cost-effective improvements and to enhance performance of the agency's mission;

(e) Develop and direct agency programs and plans for proper and cost-effective use of transportation, equipment, and supplies used for mail;

(f) Ensure that facility and program level mail personnel receive appropriate certifications and training in order to successfully perform their assigned duties;

(g) Promote professional certification for mail managers and mail center employees;

(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 incoming and outgoing personal mail;

(j) Provide guidance to agency correspondence managers on correspondence management decisions such as development and design of mailing materials including Business Reply Mail, letterhead, and mail piece design; and

(k) Represent the agency in its relations with mail service providers (usually as a Contracting Officer's Technical Representative), other agency mail managers, and the GSA Office of Governmentwide Policy.

Subpart G—Mail Center Manager Requirements

§ 102–192.135 Must we have a mail center manager at our facility?

Yes, every facility that has more than two full time people dedicated to processing mail must have a mail center manager.

§ 102–192.140 What are your general responsibilities as a Federal mail center manager?

A Federal mail center manager should—

(a) Implement policies and procedures developed by the agency mail manager, including cost control procedures;

(b) 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 printing specialists and the program level users who develop large mailings, to minimize postage and associated printing expenses through improved mail piece design, electronic transmission of data in lieu of mail, reducing the number of handwritten addresses on outgoing mail, and other appropriate measures;

(d) Ensure that all addresses on mailing lists have been validated using USPS-approved tools such as ancillary endorsements, CASS-certified software, Move Update, and NCOAlink® (more information can be found on the United States Postal Service website at *www.usps.com*);

(e) Keep current on new technologies that could be applied to reduce agency mailing costs;

(f) Collaborate and maintain professional relationships with the USPS and all other service providers;

(g) Establish performance measures and goals for mail center operations, such as a maximum time for processing and delivery of incoming mail;

(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) Manage all incoming and outgoing mail processing activities at the facility, including all regularly scheduled, small package, and expedited service providers, couriers, equipment and personnel;

(j) Be attentive to 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, the Postal Inspection Service, or other appropriate authority;

(k) Track incoming packages and accountable mail;

(l) Provide training to mail center employees at all levels on cost-effective mailing practices for incoming, outgoing, and internal mail, as well as mail security;

(m) Provide opportunities for training leading to professional certification for mail center personnel;

(n) Ensure that outgoing mail meets all the standards established by your service provider(s) for weight, size, hazardous materials content, etc.;

(o) Ensure that your facility has a written security plan, and implement that plan;

(p) Establish, publish, and maintain consistency in the facility's mail delivery and pickup times, based on need for service as established through study of mail volumes and service requirements;

(q) Collaborate with agency finance officials to establish procedures for timely processing of funds owed to service providers; and

(r) Report all information necessary for your agency's annual mail management report.

Subpart H—Program Level Mail Responsibilities

§ 102–192.145 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 its own mail manager. Each agency must 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 that is put into the mail stream by the program itself or by printers, presort contractors, or others on the program's behalf.

§ 102–192.150 What are your general responsibilities as a program level mail manager?

Your responsibilities at the program level include—

(a) Working closely with the agency mail manager and mail center managers who handle significant quantities of mail or print functions for your program, as well as mail technical experts;

(b) Ensuring that your program complies with all applicable mail policies and procedures, including this part;

(c) Coordinating with your program personnel to minimize postage and associated printing expenses through improved mail piece design, electronic transmission of data in lieu of mail, and other appropriate measures;

(d) Ensuring that all addresses on mailing lists have been validated using USPS-approved tools such as ancillary endorsements, CASS-certified software, Move Update, and NCOAlink® (more information can be found on the United States Postal Service website at *www.usps.com*);

(e) Keeping current on new technologies and practices that could reduce your mailing costs or make your use of mail more effective;

(f) Coordinating all of your program's large mailings and associated print jobs to ensure that the most efficient and effective procedures are used;

(g) Providing mail training opportunities to your program level personnel;

(h) Collaborating with agency finance officials to establish procedures for timely processing of funds owed to service providers; and

(i) Reporting total amounts paid to each service provider during the previous fiscal year to the agency mail manager (See § 102–192.90(b)(1) for more information).

Subpart I—Other Agency Responsibilities

§ 102–192.155 What should our agency-wide mail management policy statement cover?

You should have a written, agency-wide mail management policy statement that, at a minimum, addresses—

(a) Mail center security, as discussed in §§ 102–192.70, 102–192.75 and 102–192.80;

(b) Your expectations regarding program level accountability, postage expenditure data, and commercial payment processes;

(c) Your approach to performance measurement and performance management for mail;

(d) Centralized mail processing, worksharing, consolidation, and commingling to obtain postage savings;

(e) Tracking incoming packages and accountable mail;

(f) Maintaining centralized control of outgoing mail, especially outgoing express packages and letters;

(g) Tracking and managing mail costs within printing contracts;

(h) Training and professional certification for mail center managers and employees;

(i) Addressing, including machine readability, formatting, use of correct street addresses, and minimizing use of hand-written addresses;

(j) Ensuring that a USPS mail piece design analyst is consulted when creating a new mail piece;

(k) Reviewing large mailings by mail managers before they are sent to printing or a print contractor;

(l) Acceptance and processing of incoming and outgoing personal mail;

(m) Limiting unsolicited mail and mail addressed to unknown persons and former employees; and

(n) Reporting all activities to include all postage costs associated with mailing, printing, and materials, to the agency mail manager.

NOTE (1) TO §102–92.155(l) AND (m): Every agency should establish specific policies for incoming and outgoing personal mail. In general, personal mail should be discouraged or prohibited. However, an agency may establish a policy 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.

NOTE (2) TO §102–92.155(l) AND (m): Mailing costs associated with filing travel vouchers, and the payment of Government sponsored travel card billings, are considered to be ''incidental expenses'' covered by the traveler's ''per diem allowance,'' as provided for in the Federal Travel Regulation (41 CFR 300–3.1). Such mailing costs must, therefore, be paid out of the employee's per diem allowance.

NOTE (3) TO §102–92.155 (l) AND (m): Every reasonable attempt must be made to deliver first class mail, priority mail, and express mail (regardless of carrier), or to return it to the sender if the addressee cannot be identified. On the other hand, agencies may establish written policies that permit discarding of unwanted periodicals, bulk mail, and bound printed matter under specified circumstances.

§102–192.160 What less costly alternatives to expedited mail and couriers should your agency-wide mail management policy address?

Your policy statement should address the following alternatives to expedited mail and couriers:

(a) Electronic transmission via e-mail.

(b) Facsimile transmission.

(c) Internet.

§102–192.165 What authorities must I follow when contracting out all or part of the mail function?

Any contract for a mail function must require compliance with—

(a) This part (41 CFR part 102–192);

(b) The Private Express Statutes (39 U.S.C. 601–606);

(c) All agency policies, procedures, and plans, including the agency-wide mail security plan and, if applicable, facility mail security plans; and

(d) All applicable acquisition statutes and regulations.

Subpart J—GSA's Responsibilities and Services

§102–192.170 What are GSA's responsibilities in mail management?

44 U.S.C §2904(b) directs the Administrator of General Services to provide guidance and assistance to Federal agencies to ensure economical and efficient records management. 44 U.S.C. §2901(2) and (4) (C) define the processing of mail by Federal agencies as part of records management. 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.

§ 102–192.175 What types of support does GSA offer to Federal agency mail management programs?

GSA supports Federal agency mail management programs by—

(a) Assisting in the 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 web site for mail communications policy; and

(i) Serving as a point of contact for mail issues.

NOTE TO § 102–192.180: You may contact GSA at: General Services Administration, Office of Governmentwide Policy, Mail Management Policy Division (MTT), 1800 F Street, NW., STE 1221, Washington, DC 20405; or e-mail: *federal.mail@gsa.gov*.

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?
102–193.15 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.

(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 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 information 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.

(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 102–196—FEDERAL FACILITY RIDESHARING [RESERVED]

PARTS 102–197—102–220 [RESERVED]

SUBCHAPTERS H–Z [RESERVED]
CHAPTERS 103–104 [RESERVED]