

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2002.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

#### § 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by revising the date "6/1/01" to read "12/31/03" for blueberries. [FR Doc. 02-1246 Filed 1-17-02; 8:45 am]

**BILLING CODE 6560-50-S**

### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Parts 101-44 and 102-37

[FPMR Amendment H-210]

RIN 3090-AH20

#### Donation of Surplus Personal Property

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**EFFECTIVE DATE:** January 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Peter B. Zuidema, Acting Director, Personal Property Management Policy Division (MTP), 202-501-3846.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The purpose of this final rule is to update, streamline, and clarify FPMR part 101-44 and move it into the Federal Management Regulation (FMR) as FMR part 102-37. This rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency (Federal holding agency, State Agency for Surplus Property (SASP), public

airport, etc.) must follow the language contained in both the question and its answer.

This final rule includes the following changes:

1. The establishment of a uniform dollar threshold (\$500) for recipients to report overages or shortages of donated property, in addition to a shortened timeframe (30 days) for reporting such discrepancies to GSA.

2. The removal of the provision that prohibits a SASP from recovering reimbursable costs from the sales proceeds of nondonable property that has been in its inventory for more than 2 years.

3. The change of definition of "museum" to provide SASPs with more concrete guidance for making eligibility determinations for museum applicants.

4. The reinstatement of a requirement that SASPs update donee eligibility files at 3-year intervals, plus the addition of a requirement for such updates to include a review of donee screener records.

5. GSA approval of all Red Cross donations made under 40 U.S.C. 484(l).

6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.

7. The consolidation of the Federal and donation screening periods.

A proposed rule was published in the **Federal Register** on April 13, 2000 (65 FR 20014). All public comments received were considered in the formulation of this final rule.

#### B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

#### C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose information collection requirements that require the approval of the Office of Management and Budget (OMB).

#### E. Small Business Regulatory Enforcement Fairness Act

This rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

1. Part 101–44 is revised to read as follows:

#### PART 101–44 DONATION OF SURPLUS PERSONAL PROPERTY

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

##### § 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on donation of surplus personal property previously contained in this part, see FMR part 102–37 (41 CFR part 102–37).

2. Part 102–37 is added to subchapter B to read as follows:

#### PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

##### Subpart A—General Provisions

Sec.

- 102–37.5 What does this part cover?
- 102–37.10 What is the primary governing authority for this part?
- 102–37.15 Who must comply with the provisions of this part?
- 102–37.20 How do we request a deviation from this part and who can approve it?

##### Definitions

- 102–37.25 What definitions apply to this part?

##### Donation Overview

- 102–37.30 When does property become available for donation?
- 102–37.35 Who handles the donation of surplus property?
- 102–37.40 What type of surplus property is available for donation?
- 102–37.45 How long is property available for donation screening?
- 102–37.50 What is the general process for requesting surplus property for donation?
- 102–37.55 Who pays for transportation and other costs associated with a donation?
- 102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?
- 102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?
- 102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

- 102–37.75 What should be included in a shortage report?
- 102–37.80 What happens to surplus property that isn't transferred for donation?
- 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

##### Subpart B—General Services Administration (GSA)

- 102–37.90 What are GSA's responsibilities in the donation of surplus property?
- 102–37.95 How will GSA resolve competing requests?
- 102–37.100 What factors will GSA consider in allocating surplus property among SASPs?
- 102–37.105 Is GSA required to compile any reports concerning the donation program?

##### Subpart C—Holding Agency

- 102–37.110 What are a holding agency's responsibilities in the donation of surplus property?
- 102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?
- 102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?
- 102–37.125 What are some donations that do not require GSA's approval?

##### Subpart D—State Agency for Surplus Property (SASP)

- 102–37.130 What are a SASP's responsibilities in the donation of surplus property?
- 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—Miscellaneous Donation Statutes
- Appendix B—Elements of a State Plan of Operation
- Appendix C—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

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

**Subpart A—General Provisions****§ 102-37.5 What does this part cover?**

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

**§ 102-37.10 What is the primary governing authority for this part?**

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)(1)), as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

**§ 102-37.15 Who must comply with the provisions of this part?**

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

**§ 102–37.20 How do we request a deviation from this part and who can approve it?**

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

**Definitions**

**§ 102–37.25 What definitions apply to this part?**

The following definitions apply to this part:

*Cannibalization* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

*Donee* means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

*Holding agency* means the executive agency having accountability for, and generally possession of, the property involved.

*Period of restriction* means the period of time for keeping donated property in use for the purpose for which it was donated.

*Property Act* means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of titles 40 and 41 of the United States Code), the law that centralized Federal property management and disposal functions under the GSA.

*Screening* means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

*Service educational activity (SEA)* means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; e.g., maritime academies or

military, naval, Air Force, or Coast Guard preparatory schools.

*Standard Form (SF) 123, Transfer Order Surplus Personal Property* means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

*State* means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

*State agency for surplus property (SASP)* means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

*Surplus personal property (surplus property)* means excess personal property (as defined in § 102–36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

*Surplus release date* means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

*Transferee* means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

**Donation Overview**

**§ 102–37.30 When does property become available for donation?**

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

**§ 102–37.35 Who handles the donation of surplus property?**

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

**§ 102–37.40 What type of surplus property is available for donation?**

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(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.) <sup>1</sup>
(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. <sup>1</sup>
(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.

<sup>1</sup> Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

**§ 102–37.75 What should be included in a shortage report?**

The shortage report should include:

- (a) The name and address of the holding agency;
- (b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and
- (c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

**§ 102–37.80 What happens to surplus property that isn’t transferred for donation?**

Surplus property not transferred for donation is generally offered for sale under the provisions of part 101–45 of this title. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

**§ 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?**

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

**Subpart B—General Services Administration (GSA)**

**§ 102–37.90 What are GSA’s responsibilities in the donation of surplus property?**

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

- (a) Determines when property is surplus to the needs of the Government;
- (b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;
- (c) Oversees the care and handling of surplus property while it is in the custody of a SASP;
- (d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations 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.

**§ 102-37.105 Is GSA required to compile any reports concerning the donation program?**

Yes, biennially, GSA must compile a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of surplus property;

(b) Statistical information on the amount of surplus property approved for transfer to the SASPs and donated to eligible non-Federal organizations during the report period (as well as the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any recommendations GSA wishes to make on the donation program.

**Subpart C—Holding Agency**

**§ 102-37.110 What are a holding agency's responsibilities in the donation of surplus property?**

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102-37.525 and § 102-42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

(c) Set aside surplus property selected by a screener pending GSA approval of the transfer;

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102-37.115.

**§ 102-37.115 May a holding agency be reimbursed for costs incurred incident to a donation?**

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses.

However, you may not include overhead or administrative costs in these charges.

**§ 102-37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?**

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102-37.125.

**§ 102-37.125 What are some donations that do not require GSA's approval?**

(a) Some donations of surplus property that do not require GSA's approval are:

(1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102-36 of this chapter;

(2) Donations by holding agencies to public bodies under subpart H of this part;

(3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and

(4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 484(r).

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 102-36.300 of this chapter.

**Subpart D—State Agency for Surplus Property (SASP)**

**§ 102-37.130 What are a SASP's responsibilities in the donation of surplus property?**

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

(1) Public agency;

(2) Nonprofit educational or public health institution; or

(3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

**§ 102–37.135 How does a SASP become eligible to distribute surplus property to donees?**

In order to receive transfers of surplus property, a SASP must:

- (a) Have a GSA-approved State plan of operation; and
- (b) Provide the certifications and agreements as set forth in §§ 102–37.200 and 102–37.205.

**State Plan of Operation****§ 102–37.140 What is a State plan of operation?**

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

**§ 102–37.145 Who is responsible for developing, certifying, and submitting the plan?**

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for acceptance and certify that the SASP is authorized to:

- (a) Acquire and distribute property to eligible donees in the State;
- (b) Enter into cooperative agreements; and
- (c) Undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and set forth in the plan.

**§ 102–37.150 What must a State legislature include in the plan?**

The State legislature must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.

**§ 102–37.155 When does a plan take effect?**

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

**§ 102–37.160 Must GSA approve amendments or modifications to the plan?**

Yes, GSA must approve amendments or modifications to the plan.

**§ 102–37.165 Do plans or major amendments require public notice?**

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a

general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar 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 subsection 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

- (1) A public agency for one or more public purposes.
- (2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for the purpose of education or public health (including research for any such purpose).
- (3) An eligible nonprofit activity for programs for older individuals.
- (4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA

regulations, and that the property is usable and needed by the donee.

**§ 102–37.205 What agreements must a SASP make?**

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in § 102–37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

**§ 102–37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?**

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace 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 redistribution (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 203(n) of the Property Act (40 U.S.C. 484(n)) allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see § 102–37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see § 102–37.305).

**§ 102–37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?**

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

**§ 102–37.335 May a SASP enter into a cooperative agreement with another SASP?**

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate cooperative agreements may be considered when donees, because of their geographic proximity to the property 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 \$300,000 or more a year in surplus property or other Federal

assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501–7507) as implemented by Office of Management and Budget (OMB) Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations” (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

**§ 102–37.350 Does coverage under the single audit process in OMB Circular A–133 exempt a SASP from other reviews of its program?**

No, although SASPs are covered under the single audit process in OMB Circular A–133, from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

**§ 102–37.355 What obligations does a SASP have to ensure that donees meet Circular A–133 requirements?**

SASPs, if they donate \$300,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A–133. If a donee receives less than \$300,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

**Reports**

**§ 102–37.360 What reports must a SASP provide to GSA?**

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation

and to report to the Congress on the status and progress of the donation program.

**Liquidating a SASP**

**§ 102–37.365 What steps must a SASP take if the State decides to liquidate the agency?**

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

- (a) Reasons for the liquidation;
- (b) A schedule for liquidating the agency and the estimated date of termination;
- (c) Method of disposing of property on hand under the requirements of this part;
- (d) Method of disposing of the agency's physical and financial assets;
- (e) Retention of all available records of the SASP for a 2-year period following liquidation; and
- (f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

**§ 102–37.370 Do liquidation plans require public notice?**

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

**Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations**

**§ 102–37.375 How is the pronoun “you” used in this subpart?**

The pronoun “you,” when used in this subpart, refers to the State agency for surplus property (SASP).

**§ 102–37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?**

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

(a) Subsection 203(j)(2) of the Property Act (40 U.S.C. 484(j)(2)) authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102–37 as service educational activities or SEAs).

(b) Subsection 203(j)(3) of the Property Act (40 U.S.C. 484(j)(3)) authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

- (1) Medical institutions.

- (2) Hospitals.
  - (3) Clinics.
  - (4) Health centers.
  - (5) Drug abuse or alcohol treatment centers.
  - (6) Providers of assistance to homeless individuals.
  - (7) Providers of assistance to impoverished families and individuals.
  - (8) Schools.
  - (9) Colleges.
  - (10) Universities.
  - (11) Schools for the mentally disabled.
  - (12) Schools for the physically disabled.
  - (13) Child care centers.
  - (14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
  - (15) Museums attended by the public.
  - (16) Libraries, serving free all residents of a community, district, State or region.
- (c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

#### Donee Eligibility

##### § 102–37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

##### § 102–37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

(a) Conform to the definition of one of the categories of eligible entities listed in § 102–37.380 (see appendix C of this part for definitions);

(b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;

(d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and

(e) Operate in compliance with applicable Federal nondiscrimination statutes.

##### § 102–37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

(a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of 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 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(e) It isn’t currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

**§ 102–37.450 What agreements must a donee make?**

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an “as is, where is” basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will

vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

**Special Handling or Use Conditions**

**§ 102–37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?**

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of \$5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For . . .	See . . .
(1) Policies and procedures governing the donation of aircraft parts .....	Part 101–37, subpart 101–37.6, of this title.

For . . .	See . . .
(2) Documentation needed by GSA to process requests for aircraft or vessels .....	§ 102–37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels .....	§ 102–37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels .....	§ 102–37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, in order to acquire the property. Include the BATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the SASP certifying that all Federal Government markings will be obliterated before use.

**§ 102–37.460 What special terms and conditions apply to the donation of aircraft and vessels?**

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102–37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional

transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for nonflight 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?**

**§ 102–37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?**

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial

cost of any repairs required to make the property usable if:

- (a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;
- (b) No breach of the terms and conditions of donation has occurred; and
- (c) GSA authorizes the reimbursement.

**§ 102–37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?**

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

**Special Provisions Pertaining to SEAs****§ 102–37.510 Are there special requirements for donating property to SEAs?**

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

**§ 102–37.515 Do SEAs have a priority over other SASP donees for DOD property?**

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

**Subpart F—Donations to Public Airports****§ 102–37.520 What is the authority for public airport donations?**

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 41 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport

purposes and GSA approves the donation.

**§ 102–37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?**

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

**§ 102–37.530 What are FAA's responsibilities in the donation of surplus property to public airports?**

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

- (a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;
- (b) Setting eligibility requirements for public airports and making determinations of eligibility;
- (c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;
- (d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;
- (e) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use; and
- (f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

- (1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.
- (2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.
- (3) Recovering any expired or invalid screener authorizations.

**§ 102–37.535 What information must FAA provide to GSA on its administration of the public airport donation program?**

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

- (a) Provide copies of internal instructions that outline the scope of

FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and

- (b) Report any compliance actions involving donations to public airports.

**Subpart G—Donations to the American National Red Cross**

**§ 102–37.540 What is the authority for donations to the American National Red Cross?**

Subsection 203(l) of the Property Act (40 U.S.C. 484(l)) authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

**§ 102–37.545 What type of property may the American National Red Cross receive?**

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

**§ 102–37.550 What steps must the American National Red Cross take to acquire surplus property?**

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

- (a) Have 21 calendar days to inspect the property or request it without inspection; and
- (b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

**§ 102–37.555 What happens to property the American National Red Cross does not request?**

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

**Subpart H—Donations to Public Bodies in Lieu of Abandonment/ Destruction**

**§ 102–37.560 What is a public body?**

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

**§ 102–37.565 What is the authority for donations to public bodies?**

Subsection 202(h) of the Property Act (40 U.S.C. 483(h)) authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the

estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

**§ 102–37.570 What type of property may a holding agency donate under this subpart?**

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102–36 of this chapter) may be donated under this subpart. A holding agency may not donate property that requires destruction for health, safety, or security reasons. When disposing of 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—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—Elements of a State Plan of Operation**

The following is the information and assurances that must be included in a SASP's plan of operation:

**STATE PLAN REQUIREMENTS**

Regarding . . .	The plan must . . .
(a) Designation of a SASP .....	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority .....	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property .....	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges .....	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, 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.

## STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(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.
(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 <a href="http://www.whitehouse.gov/OMB">www.whitehouse.gov/OMB</a> ), 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.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(m) Cooperative agreements .....	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation .....	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms .....	Include copies of distribution documents used by the SASP.
(p) Records .....	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

**Appendix C—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations**

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

*Accreditation* means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

*Accredited* means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for 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.

*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 arboreta; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

*Nationally recognized accrediting agency* means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at <http://www.ed.gov/offices/OPE/accreditation/index.html>)

*Nonprofit* means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

*Parks and recreation* means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

*Program for older individuals* means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

*Provider of assistance to homeless individuals* means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

*Provider of assistance to impoverished families and individuals* means a public or

nonprofit organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

*Public agency* means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

*Public health* means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

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

*Public purpose* means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

*Public safety* means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

- (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.

Dated: January 2, 2002.

**Stephen A. Perry,**

*Administrator of General Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 447

[CMS-2134-F]

RIN 0938-AL05

### Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the Medicaid upper payment limit (UPL) provisions to remove the 150 percent UPL for inpatient hospital services and outpatient hospital services furnished by non-State government-owned or operated hospitals. This final rule is part of this Administration's efforts to restore fiscal integrity to the Medicaid program and reduce the opportunity for abusive funding practices based on